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Earl Warren Oral History Project

EARL WARREN: THE CHIEF JUSTICESHIP

Herbert Brownell	*Earl Warren's Appointment to the Supreme Court*
Louis Finkelstein	*Earl Warren's Inquiry into Talmudic Law*
James C. Hagerty	*Earl Warren's Appointment to the Supreme Court*
William W. Oliver	*Working in the Supreme Court: Comments on Court, Brown Decision, Warren and Other Justices*
Martin F. Richman	*Law Clerk for Chief Justice Warren, 1956-57*
Harold Stassen	*Eisenhower, the 1952 Republican Convention, and Earl Warren*
M. F. Small	*Letter Regarding Earl Warren's Court Appointment, November 15, 1972*

Interviews Conducted by
Amelia Fry
Mortimer Schwartz
Miriam Stein

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PREFACE

The Earl Warren Oral History Project, a special project of the Regional Oral History Office, was inaugurated in 1969 to produce tape-recorded interviews with persons prominent in the arenas of politics, governmental administration, and criminal justice during the Warren Era in California. Focusing on the years 1925-1953, the interviews were designed not only to document the life of Chief Justice Warren but to gain new information on the social and political changes of a state in the throes of a depression, then a war, then a postwar boom.

An effort was made to document the most significant events and trends by interviews with key participants who spoke from diverse vantage points. Most were queried on the one or two topics in which they were primarily involved; a few interviewees with special continuity and breadth of experience were asked to discuss a multiplicity of subjects. While the cut-off date of the period studied was October 1953, Earl Warren's departure for the United States Supreme Court, there was no attempt to end an interview perfunctorily when the narrator's account had to go beyond that date in order to complete the topic.

The interviews have stimulated the deposit of Warreniana in the form of papers from friends, aides, and the opposition; government documents; old movie newsreels; video tapes; and photographs. This Earl Warren collection is being added to The Bancroft Library's extensive holdings on twentieth century California politics and history.

The project has been financed by four outright grants from the National Endowment for the Humanities, a one year grant from the California State Legislature through the California Heritage Preservation Commission, and by gifts from local donors which were matched by the Endowment. Contributors include the former law clerks of Chief Justice Earl Warren, the Cortez Society, many long-time supporters of "the Chief," and friends and colleagues of some of the major memoirists in the project. The Roscoe and Margaret Oakes Foundation and the San Francisco Foundation have jointly sponsored the Northern California Negro Political History Series, a unit of the Earl Warren Project.

Particular thanks are due the Friends of The Bancroft Library who were instrumental in raising local funds for matching, who served as custodian for all such funds, and who then supplemented from their own treasury all local contributions on a one-dollar-for-every-three dollars basis.

The Regional Oral History Office was established to tape record autobiographical interviews with persons prominent in the history of California and the West. The Office is under the administrative supervision of James D. Hart, Director of The Bancroft Library.

Amelia R. Fry, Director
Earl Warren Oral History Project

Willa K. Baum, Department Head
Regional Oral History Office

30 June 1976
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* Deceased during the term of the project.

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Brownell, Herbert, *Earl Warren's Appointment to the Supreme Court.*
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Warren, Robert, *Playing, Hunting, Talking*

RICHARD M. NIXON IN THE WARREN ERA
Adams, Earl
Crocker, Roy
Day, Roy
Dinkelspeil, J. S.
Hansen, Victor
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Earl Warren Oral History Project

Herbert Brownell

EARL WARREN'S APPOINTMENT TO THE SUPREME COURT

A Retrospective Memorandum

with an
appended interview transcript

Conducted by
Amelia R. Fry

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TABLE OF CONTENTS - Herbert Brownell

INTRODUCTION i

MEMORANDUM: THE APPOINTMENT OF EARL WARREN TO THE SUPREME COURT OF THE UNITED STATES 1

Chronology of Offer 1

People and Factors in the Selection 6

Eisenhower's Prior Contacts with Earl Warren 11

Brownell's Relationship to Warren 16

1952: The Fair Play Amendment 20

Warren Rejects Eisenhower Plan 23

The Airport Conference 25

The Appointment 28

Confirmation Delay 30

Warren as Friend and Associate 37

APPENDIX: INTERVIEW 42

The 1952 Republican Convention's Contested Delegations 42

Putting Eisenhower Over the Top 47

Warren As Campaigner, 1948 and 1952 48

Offers to Warren of a Supreme Court Justiceship 53

Choosing a Successor to Chief Justice Fred Vinson 56

The Offer of the Chief Justiceship to Warren 65

Investigation of Earl Warren and His Views 70

White House Responses to Warren Court Decisions 72

INDEX 76

INTRODUCTION

Date of Interview: October 29, 1974

Date of Memorandum: August, 1975

Place of Interview: Mr. Brownell's office at Lord, Day & Lord, attorneys; New York

Those Present: Mr. Brownell, interviewer Amelia Fry, and Mr. Brownell's daughter Ann Brownell Sloane

History of this Manuscript:

The manuscript has two parts: Mr. Brownell's own carefully-worded memorandum, and the transcript of the tape-recorded interview which appears as an appendix.

The process began with the efforts of the Earl Warren Oral History Project to record selected persons who could comment most authoritatively on the why's and how's of Earl Warren's appointment as chief justice of the United States Supreme Court. Herbert Brownell was an obvious and prime choice because of his role as a major advisor to President Eisenhower in both his campaign and his appointments. With the help of two former interviewees who had been members of the U.S. Department of Justice during Attorney General Brownell's tenure, an interview appointment was agreed upon. To those men--U.S. District Judge Stanley N. Barnes and Warren Olney III, as well as to Mr. Brownell himself--The Regional Oral History Office is deeply indebted.

Chronologies of Governor Warren's part in the 1952 campaign and the subsequent court appointment of September 29,1953, were sent from ROHO's files to Mr. Brownell, not so much for factual data but as a collection of ambiguous and often contradictory sources, primary as well as secondary, to which his interview could address itself. In addition, digests of the interviewer's notes from pertinent oral histories at the Eisenhower Library at Abilene, Kansas, were made available to him.* Mr. Brownell's daughter

---

*The oral histories of Sherman Adams, Richard M. Pittenger, Howard K. Smith, and Ralph Cake.

Ann was quite conversant with her father's papers, and her presence during most of the interview as an additional source person was a valuable aid.

The interview itself was held in the spacious office of New York's oldest continuous law firm, and since the autumn day was crisp and clear and the suite was high above lower Broadway, a breathtaking view was visible through the generous windows. Furnishings were unostentatious, tasteful, and quiet. Mr. Brownell, in spite of the complex and demanding schedule of his law practice, welcomed the interviewer with unhurried grace, then set about organizing his memory of 1952 in a quiet and systematic way. He was at all times helpful and pleasant in the task upon which, with the assistance of his daughter, we were jointly embarking. Both Brownells knew what they were after: recreating the actual happenings as best they could be determined, and in the process perhaps dispelling a few myths. They were well aware of the historic necessity of the recording, a story that only Brownell was alive and qualified to tell in its entirety.

In December of 1974 the transcript, corrected by the interviewer and with further questions added, was sent to him for his own review and additions. It had also been sent to Brownell's friend Warren Olney III, at the former's request, for further checking. In an attempt to authenticate everything he had recorded, Mr. Brownell did further research; one or two statements were deleted when he could find no verification in his papers, such as the date when he first discussed the "fair play amendment" with Earl Warren.

During his research to verfiy his account of the threatened barriers to Warren's confirmation in the senate, he wrote to the interviewer on March 24, 1975, that the senate judiciary committee staff "was most helpful and gave me the opportunity to review the Judiciary Committee hearings and make photocopies as required."

One of the fortunate by-products of this interview was that Mr. Brownell offered to make available his annual reports of the Department of Justice for 1953-1954 and 1954-1955, years in which the reports could not be printed for general library distribution. Photostats of these missing documents are now at the University of California law libraries on both the Berkeley and the Davis campuses.

In the process of checking out statements and adding new information, it became clear to Mr. Brownell that a basic memorandum format would be more cohesive than a patched interview. His forty-page statement arrived at ROHO in late summer of 1975, and afterward he agreed to the present arrangement of putting the interview in as an appendix. In the memo, only topic headings have been inserted; and except for those one or two statements

of which he was not sure, the interview is very much the way it was when first sent to him.

At one point it was suggested that Mr. Brownell also attempt to answer a set of questions on a related but different topic--Richard Nixon's 1952 convention actions as a part of the Warren delegation and the effect of his developing vice-presidency on Warren's status, if any; but this subject was turned down, not because it was especially sensitive in the year of Watergate's denoument, but because of the enormous research task that Mr. Brownell would have had to undertake and for which he simply did not have the time then. If he and his daughter continue their efforts, perhaps a full memoir of Brownell's life will emerge from their joint enterprise. If it does, the documented history of mid-century America will be much the richer.

Amelia R. Fry
Interviewer/Editor

1 July 1977
Regional Oral History Office
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University of California at Berkeley

August 1975

The attached memorandum was prepared by me in response to a request from the University of California Regional Oral Research Project on the life of Earl Warren, to give my recollection of the events leading up to Warren's appointment as Chief Justice of the United States. I was also requested to detail to the best of my recollection my experiences with the Chief Justice over the years, and to answer specific questions about my personal knowledge as to whether certain reported events took place.

Herbert Brownell

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August 29, 1975

Ms. Amelia R. Fry
Project Director
The Earl Warren Oral History Project
University of California
The Bancroft Library
Berkeley, California 94720

Dear Ms. Fry:

I have at last finished a comprehensive statement of the events leading up to the appointment of Earl Warren as Chief Justice of the United States. I had the benefit of the files of the Department of Justice and the Senate Judiciary Committee, as well as the recollections of William P. Rogers, Warren Olney, and J. Lee Rankin. I am enclosing it herewith.

I would like to put the restriction on that no part of it should be used or quoted publicly during my lifetime without my permission.

Under these circumstances, I do not know whether you want to use the oral interview of October 29, 1974. If so, it should be preceded by the enclosure and it should be changed in the following respects:

1. My daughter Ann's name is Mrs. Robert B. Sloane.

2. I have not had the time to research my files or other records on the questions that you asked in your letter of December 12, 1974.

If you decide to use the oral interview, I would like to have it subject to the same restriction as above stated.

Sincerely,

Herbert Brownell

Herbert Brownell

HB:MC
Enclosure

MEMORANDUM

THE APPOINTMENT OF EARL WARREN TO THE SUPREME COURT OF THE UNITED STATES

by Herbert Brownell August, 1975

Chronology of Offer

The first discussion between President-Elect Eisenhower and then-Governor Earl Warren of California about an appointment to the United States Supreme Court occurred just prior to the President-Elect's departure on his trip to Korea in late November 1952. At that time, the President-Elect had a suite of offices in the Commodore Hotel in New York City and was engaged primarily in the selection of his cabinet and other top officials of his administration. General Lucius D. Clay and I were an informal committee appointed by the President-Elect to advise him in the selection of persons for these top positions, and during this period we were requested by the President-Elect to obtain Governor Warren's opinion of a number of individuals who were under consideration for cabinet posts.

I have read accounts that the position of Secretary of Interior was offered to Governor Warren during this period, but I did not know of any such offer. I am strengthened in that view by my recollection that this position was offered promptly after the election to Governor Arthur Langlie of the state of Washington who declined it because he had just been elected as Governor for a four-year term. I further

remember a policy decision in our committee that this position should be filled preferably by someone who was not from California or Arizona, due to the dispute between those two states as to the distribution of water from the Colorado River. I believe Governor Warren may well have been consulted for his opinion of various persons considered for the post of Secretary of the Interior, and that may have been the basis for the stories that the post was offered to him.

One day the President-Elect stopped by my office, which was a couple of doors away from his suite of offices, and stated that during the discussions since Election Day of persons to hold high office in his administration, he had given thought to the probability that he would be called upon to make one or more appointments to the Supreme Court. He stated that he had in mind offering to Governor Warren the first vacancy which might occur on the Supreme Court. He stated that since I was his designee as Attorney General, he would like to have my advice on all judicial appointments, and specifically as to Governor Warren's legal qualifications for the Supreme Court position. He concluded that, on the basis of his personal contacts with Governor Warren and his knowledge of his character and his record

in public office in California, Governor Warren should seriously be considered for membership on the Court. I stated that I believed that Governor Warren's legal training and long and successful career as Prosecuting Attorney and then as California Attorney General provided the requisite legal background and that previous judicial experience was not a prerequisite for highly effective service on the Supreme Court. We reviewed our previous discussions, hereinafter referred to, about Governor Warren's political philosophy. At this point the President-Elect said, "Why don't I call him now and tell him that I have him under consideration for the first vacancy on the Supreme Court." He put in the call from my room and I listened to his end of the conversation, which I judged was a very friendly one. Of course, I do not know what Governor Warren said on his end of the line but later conversations which I had with him made it clear to me that he not only welcomed the suggestion of the President-Elect but thereafter made his plans with the thought in mind that the appointment would be made whenever the first vacancy on the Court occurred.

After inauguration, in 1953, during the course

of a talk with the President in the Oval Room I told him that all the key positions in the Department of Justice had been filled except for the position of Solicitor General. A few days later he called me to further discuss the Solicitor General appointment. He reminded me of the conversation that he had had with Governor Warren about the first vacancy on the Supreme Court and stated that he thought it would be of benefit to Governor Warren, if he was later to go on the Supreme Court, first to serve as Solicitor General, especially since there had been a considerable lapse of time since Governor Warren had actively argued cases and practiced law in the positions of Prosecuting Attorney and Attorney General of his state. We discussed whether it would be possible for Governor Warren to leave the governorship at that time, since we were anxious to have a new Solicitor General assume office as soon as possible. I told the President that I was enthusiastic about the idea of his becoming Solicitor General and it was agreed that I would call Governor Warren and arrange a meeting with him to discuss it. I called Governor Warren and found that he was planning to make a trip to Scandinavia. So I met with him at

the Statler Hotel in Washington and told him that the President wanted to nominate him as Solicitor General and believed service in this position would be valuable prior to membership on the Supreme Court. I discussed with him the factor of time -- that this would entail his moving to Washington as soon as possible. He said he would think it over and let me know, and we arranged a code message that he could send me while he was abroad. Shortly thereafter I received the message. The text of the cable message, which was dated August 3, 1953 and sent from Stockholm, stated: "THANKS FOR MESSAGE STOP HAVE BEEN REFRESHED BY TRIP STOP LOOKING FORWARD TO RETURN TO MY WORK." This was the message I had hoped to receive because it represented the code we had agreed upon as his method of telling the President that he accepted. Accordingly, I immediately sent him a return cable, c/o the United States Embassy in Stockholm, stating: "WE ARE BOTH GRATIFIED TO RECEIVE YOUR CABLE." I had advised the President of the receipt of Governor Warren's cable before I sent my answer.

When Governor Warren went back to California, as he later related to me, he started preparing to close out his Governorship and move to Washington to assume

the Solicitor Generalship. It was right at that time Chief Justice Fred Vinson died, creating a totally unexpected vacancy in the Chief Justiceship.

I had now worked closely with the President in the selection of a considerable number of judges for the lower federal courts and had established a regular routine of collecting the necessary information to be able to make judicial recommendations to the President. The President asked me to follow the same procedures in collecting background information to submit recommendations to him for the Chief Justiceship.

People and Factors in the Selection

I have read in one of President Eisenhower's books that he discussed with Secretary of State Dulles the question of whether the Secretary of State would consider an appointment as Chief Justice. The Eisenhower book records that the Secretary of State said that he did not wish to have the President consider him for this position. At no time did either the President or the Secretary of State ever mention this to me, so I do not know the contents of their talk beyond what appears in the Eisenhower book. I have also read that Vice President Nixon and Senator William F. Knowland conferred with the President about Governor Warren's appointment

as Chief Justice but I did not know of any such conferences.

The early discussions which I had with the President on the Chief Justiceship were confined to a discussion of whether any of the incumbent Associate Justices should be appointed as Chief Justice. I seriously considered a recommendation of Associate Justice Robert Jackson. His active role in favor of President Franklin Roosevelt's court packing plan, as well as his publicized disputes with Associate Justice Hugo Black, however, militated against the otherwise favorable consideration of his appointment. Consideration was also given by me to a recommendation of the appointment of Associate Justice Harold Burton, who was the only member of the Court who had been an active Republican before he was appointed, although he was appointed by a Democratic president. Justice Burton's health was not of the best, and this factor militated against such a recommendation.

At this point the President stated to me that he had decided the appointment should go to someone not then on the Supreme Court. Elevation of one of the Associate Justices to the Chief Justiceship would have

opened the way for appointment of Governor Warren as an Associate Justice but this was not mentioned to me by the President.

We then listed outstanding individuals who would be qualified for the Chief Justiceship. Among those listed at this stage were Arthur Vanderbilt, Chief Justice of the Supreme Court of New Jersey; Orie L. Phillips, Chief Judge of the U. S. Court of Appeals of the Tenth Circuit; John J. Parker, Chief Judge of the U. S. Court of Appeals of the Fourth Circuit (who had at one time been nominated to the Supreme Court by President Herbert Hoover but his name was rejected by the United States Senate); John W. Davis, former Solicitor General of the United States and former Democratic nominee for President; and Governor Warren. It was clear to me at this time, by reason of our preliminary discussions of these above-named persons, that President Eisenhower did not feel that his prior discussions with Governor Warren had related to a vacancy in the post of Chief Justice, but that he had had in mind an Associate Justiceship in his original call to Governor Warren about a "first vacancy."

At this point I prepared to give the President oral reports on each of the above-named persons and, in due course, reviewed pertinent factors of their careers

with the President. The President stated that he thought it was desirable that the person selected for Chief Justice should not only be qualified in the field of law, but should be someone who was held in high esteem by the American people for past public service. Chief Justice Hughes and Chief Justice Taft were mentioned as examples of men who not only had the requisite character and legal ability but also at the time of their appointment to the Chief Justiceship were nationally known leaders who were held in high regard for their past public service. The President emphasized that partisan politics had no place in the selection and in this connection mentioned to me the nonpartisan character of the government of California as administered by Governor Warren. We also discussed the desirability of having the Chief Justiceship held by a person of broad administrative experience because of the ever increasing necessity for the Chief Justice, as head of the Judicial Conference of the United States, to deal with the organizational problems of the federal courts and the policy problems of judicial administration. The factors of age and health also entered into the discussions of the various persons whose

names had been mentioned for the post.

At this point in the discussions the President stated that while he had not made up his mind definitely, he considered Governor Warren as the leading prospect and that he would like to have me complete my study of Governor Warren's public record and confer personally with Governor Warren to ascertain his immediate availability and to determine whether he would prefer service first as Solicitor General as previously agreed upon, or to be plunged suddenly into the work of the Court.

Both the President and I had been told separately by members of the Court that they considered it very important to have full membership of the Court restored by the time of the opening of the 1953 fall session of the Court because a number of significant cases had been held open for reargument at the beginning of the new term.

Accordingly it was necessary at this point to consider the legal problem of whether a person selected by the President for the position as Supreme Court Justice could sit with the Court and vote on cases before such person had been confirmed by the United States Senate. Our legal research, which was conducted

by Assistant Attorney General J. Lee Rankin who was later to become Solicitor General and Chief Counsel to the Warren Commission investigating the assassination of President Kennedy, showed that in the past one Chief Justice had sat on the Court and voted on cases prior to a vote on his Senate confirmation. The President accepted our opinion that there was no legal or constitutional bar. Later, when a substantial delay in holding confirmation hearings before the Senate Judiciary Committee occurred, an informal challenge was raised by various commentators as to the validity of the votes of Governor Warren as a member of the Court because of lack of Senate confirmation, but this challenge was never seriously pressed when the confirmation hearings were finally held.

Eisenhower's Prior Contacts with Earl Warren

Before describing the conference which I held with Governor Warren, pursuant to the President's instructions, I find it interesting to record the prior contacts between President Eisenhower and Governor Warren as known to me, for undoubtedly the impressions created as a result of these contacts were, consciously or unconsciously, considered by President Eisenhower in reaching his final decision to nominate Governor Warren

as Chief Justice. The first time that I had discussed with President Eisenhower the public record of Governor Warren was at the meeting I had in Paris with the then-General Eisenhower, Commander-in-Chief of the NATO forces, at his NATO headquarters outside of Paris. The meeting was held in March of 1952 and was unpublicized. It had been arranged by General Lucius D. Clay representing the volunteer group that was then meeting regularly to promote the nomination of General Eisenhower as the Republican candidate for President. I was a member of that group, but until that time I had no clear indication whether General Eisenhower would allow his name to be voted upon for the Presidency. The purpose of my visit was to formulate a judgment for the group as to whether we could reasonably expect General Eisenhower to accept the nomination if it was offered to him.

In the course of our conversation, General Eisenhower asked me to relate my views about the then-current national leaders of the Republican Party. He stated that while he knew personally some of the leaders of the Party who were in Washington, such as Senator Taft, he was not personally acquainted with many of the

leaders, especially governors of the states, who would undoubtedly be important factors in any presidential campaign, especially if the Republican Party was to succeed in electing a President again after 20 years of Democratic presidents. He specifically mentioned Governor Warren as one of these leaders and I told him of Governor Warren's stand on various public issues of the day as revealed in his 1948 campaign for the vice presidency and since that time as Governor of California. As to his stand on international affairs, I pointed out that he was a strong supporter of the United Nations and had generally taken an "internationalist" point of view as being the proper role for the Republican Party. I expressed the opinion that Governor Warren would support General Eisenhower's views in foreign affairs, in opposition to the isolationist wing of the Republican Party, in the showdown on this issue which was inevitable at the forthcoming Republican National Convention. I also briefed General Eisenhower on the stand which Governor Warren had taken in the 1948 campaign and as Governor in favor of the so-called "fair employment practice commissions" to provide equal job opportunities for negroes, in favor of liberal public health and social security programs, and in favor of strong state and

local governments to give as much autonomy to local agencies of government as possible to keep governmental decisions close to the people.

So far as I know, the first meeting between General Eisenhower and Governor Warren took place at the Republican National Convention in Chicago. Governor Warren paid a call upon the new presidential nominee. I do not know what they talked about, but believe it was a courtesy call, since Governor Warren also called on Senator Taft that same day. When General Eisenhower campaigned in California after the nomination, he spent some considerable time with Governor Warren and they spoke from the same platform. Near the end of the campaign, the Eisenhower headquarters was bombarded with "dope stories" that the State of California might fail to cast its electoral votes for the Eisenhower ticket by reason of the great activity of a conservative group in the State of California supporting General MacArthur. General Eisenhower asked me to check with Governor Warren as to his view of the political situation in that State. Governor Warren assured me and I, in turn, assured General Eisenhower that the conservative movement for General MacArthur was not to be considered

as a major element in the California campaign and that we were convinced that General Eisenhower would easily carry the state. General Eisenhower commented to me at one time thereafter that Governor Warren had given us good political advice in this instance. Also during the presidential campaign, General Eisenhower was consulted and approved plans to have Governor Warren preside at a campaign strategy conference of Western Republican governors and also to speak on behalf of the Eisenhower ticket in the Midwest near the close of the campaign.

The friendly personal relationship which developed between President Eisenhower and Governor Warren during the campaign continued after the presidential inauguration. Shortly after the inauguration the President was called upon to designate representatives of the United States to attend the coronation of Queen Elizabeth II. He selected Governor Warren as one of these representatives. Others were General George Marshall and General Omar Bradley. In his book, "Mandate for Change," President Eisenhower records that in connection with the appointment of Governor Warren as one of the U.S. representatives he had an opportunity to talk to Governor Warren "about his political philosophy."

He states that he found him to be a man of high ideals and common sense and records that at that time he had Governor Warren under consideration for appointment to the Supreme Court when a vacancy occurred.

Brownell's Relationship to Warren

Inasmuch as I was the President's representative to discuss the Chief Justiceship with Governor Warren, I would like to record also some recollections of my own prior relationships with Governor Warren. I had become acquainted with Governor Warren shortly after my election as National Chairman of the Republican Party at the 1944 National Convention of the Party at which Governor Dewey of New York had been nominated for President and Governor Bricker of Ohio as Vice President. Governor Warren at that time was highly respected among the Republican governors of the country. He enthusiastically supported the Dewey ticket at a meeting of the Republican governors which was held early in the campaign in St. Louis to solidify the Republican organization for the campaign. One of the California representatives on the Republican National Committee at that time was Mr. Raymond Haight who was close to Governor Warren in political matters and who was a strong supporter of my efforts, as Chairman, to revitalize the Party. After the 1944 campaign these

efforts continued and I asked the various Republican governors to take recognition of the fact that Republican Party policy statements were being prepared by the Republicans in the Senate and House for presentation at a meeting of the National Committee to be held in Chicago in December, 1945, and requested their views. Governor Warren supported my publicly-expressed view that it was important for the Party, in its legislative program, to support the platform which had been adopted by the Party at its National Convention in 1944. The text of his letter was as follows:

> "I have received your telegram inviting an expression of views in regard to Republican Party policy.
>
> "I think one of the first things we should do is to review our national platforms to see if the Republican group in Congress has conformed.
>
> "Then I think we ought to have a definite program for producing the sixty million jobs that both candidates discussed in the last campaign. I believe also that we should have a definite program on social security, a program of improving the health of our people, the conservation of our natural resources, and an anti-monopoly program.
>
> "Unfortunately, we are being held up to the public as the Party that opposes legislation in these fields. I do not believe it is sufficient to oppose the proposals of the administration even where they are ill-advised. We must have an affirmative program

> which we offer to the public for the solution of our basic problems. Until this is done it will be difficult to convince a majority of the people of our desire and ability to raise the standards of American living.
>
> "I am happy that this survey is being made because for a long time I have been convinced of its immediate necessity."

Incidentally, I am confident that if the Republican leaders in Congress had moved aggressively to support the Republican platform, President Truman would have made a far less effective campaign against the Dewey-Warren ticket in the closely contested 1948 campaign.

After the 1944 campaign was over and Governor Dewey had lost the election, there was a movement by some of the Republican leaders in the Congress to remove me as National Chairman because of the defeat and because of my close personal friendship with Governor Dewey who, it was thought, would undoubtedly be a candidate for the presidency again in 1948. Mr. Haight, after reporting to me that he had consulted Governor Warren, led the debate at the National Committee meeting in Indianapolis where my removal was to be voted upon, and spoke in favor of retaining me as National Chairman and in favor of accepting the program for the strengthening of the Party which I had outlined to the Committee

at the meeting. He was successful in obtaining a favorable vote.

At the 1948 National Convention, Governor Warren was a candidate for the presidency. I had meantime resigned as Chairman of the Republican National Committee and was heading the campaign for Governor Dewey's nomination. While there was rivalry between the two forces for the nomination, there was agreement on the basic outline of an internationalist and progressive platform. After Governor Dewey had been nominated, I supported the proposal that Governor Warren be nominated for Vice President, and Governor Dewey decided upon Governor Warren as his running mate.

During the campaign Governor Warren appointed Senator William F. Knowland as his liaison at the Dewey campaign headquarters and I acted as Governor Dewey's liaison with the Warren campaign organization. When Governor Warren came to Baltimore for a campaign speech, I attended the meeting and thereafter Mrs. Brownell and I gave an informal reception for our families and a few friends in honor of the Warrens, and their campaign assistants, at our temporary residence outside of Washington. I don't remember any questions of high

policy being discussed but I do remember that we had a crisis midway in the reception. It turned out that Mrs. Warren is allergic to the presence of cats and our old family cat did not respect her feeling in the matter. Mrs. Warren actually became ill as a result of the cat incident and it took the best efforts of Senator Knowland and myself to store the cat in an inaccessible place for the rest of the day. Evidently this made quite an impression on Mrs. Warren because years afterward at the time of the memorial service in the Supreme Court Building for the late Chief Justice she recalled the incident to Mrs. Brownell and me.

1952: The Fair Play Amendment

When the 1952 presidential campaign got underway Governor Warren became a candidate for the presidency and made some pre-convention speeches around the country in support of his candidacy. General Eisenhower and Senator Taft were the leading contenders and right up to the convening of the convention it was uncertain as to which would be nominated. I became convinced that unless the Eisenhower forces could obtain the support of the states who had favorite son candidates -- Warren of California, Stassen of

Minnesota and McKeldin of Maryland -- it might not be possible to nominate General Eisenhower.

I was directing the strategy of the pre-convention campaign on behalf of General Eisenhower and developed a plan which I believed would unite all Eisenhower and favorite son delegates at the convention and demonstrate at the outset that Senator Taft did not have a majority of the delegates supporting him. The issue to dramatize this strategy was the dispute which was developing in the pre-convention period as to the seating of contesting delegations from Texas, Lousiana and Georgia. The contests were close. It appeared to me that the result would be decided on the basis of whether the contested delegates preliminarily placed on the temporary rolls of the convention by vote of the National Committee, would be entitled to vote at the convention on the question of whether or not they were to be permanently seated. If they were allowed to vote on their own seating I believed that the preliminary vote of the Taft-dominated National Committee would be sustained. If they were not allowed to vote on their own seating, I believed that the contested delegations favored by the Eisenhower forces would be seated. I

remembered that this problem had been faced at the 1912 Republican convention and that Elihu Root as Chairman of the convention had ruled that the delegates recommended for seating by the National Committee could, after the convention convened, themselves vote on the question of whether or not their seating should be confirmed. In this way the forces of William Howard Taft (the father of Senator Robert A. Taft) had defeated the contesting forces of Theodore Roosevelt. I reviewed the 1912 record and then drafted the so-called "fair play amendment" to the rules of the Republican convention which had the effect of disallowing the right of any contested delegate to vote on the confirmation of his seating.

At a meeting of the Republican governors held shortly before the convening of the National convention they voted unanimously in favor of supporting the fair play amendment. Governor Warren was one of the governors taking this public position, and thereafter the California representatives on the National Committee and the California delegation at the convention supported this position. The Warren position was undoubtedly dictated not only by the merits of the proposal but was advantageous to his own candidacy for President.

If the fair play amendment had failed, Senator Taft would have undoubtedly been nominated. The favorite son candidates would not have had a chance. But if the fair play amendment was adopted, no candidate would have had a majority on the first ballot, and the stage would be set for the favorite son candidacies to be seriously considered. Thus, for much the same reasons the Minnesota and Maryland delegations also supported the fair play amendment.

Warren Rejects Eisenhower Plan

When the convention convened, the fair play amendment was adopted and thereafter the Taft candidacy disintegrated. The night before the final vote on the presidential nomination, Governor Warren and Governor Stassen met with their respective campaign managers -- Senator Knowland and Warren Burger who afterwards became Assistant Attorney General, then a Judge on the U. S. Court of Appeals of the District of Columbia Circuit and succeeded Earl Warren as Chief Justice of the United States. Governor Stassen proposed that the California and Minnesota delegations should cast their votes for General Eisenhower if at the end of the first ballot it appeared that such votes would be sufficient to nominate General Eisenhower. Governor Warren rejected this proposal. At the end of the first roll call but before the official tally had been announced, it was clear that

General Eisenhower was only a few votes short of the nomination, at which time Governor Stassen obtained the floor and voted the Minnesota delegation in favor of General Eisenhower's nomination. Even though General Eisenhower thereby obtained the requisite votes for nomination, the California delegation refused to change its vote and continued to vote for Governor Warren. I mention this situation in some detail because it shows that General Eisenhower was in no way indebted to Governor Warren for receiving the Republican nomination.

Immediately after the nomination I had dinner with the presidential nominee and told him that it was necessary for me to go back to my law practice at that point and that I would be unable to participate in the post-convention campaign in any important way. I stated that I felt that attainment of the nomination was much the most difficult part of the campaign and that the post-convention campaign would result in a comparatively easy victory for him. However, later in the campaign in late September, General Eisenhower asked me to return to the political arena and spend full time at his headquarters for the balance of the campaign. During this period I not only worked with Governor

Warren on the MacArthur situation in California, as referred to above, but arranged for him to make speeches at the close of the campaign on behalf of the Eisenhower candidacy. Thus, some months later when President Eisenhower asked me to fly to California to meet with Governor Warren to discuss seriously the Chief Justiceship, my relationship with Warren was one of long standing duration, and one which eliminated necessity for formalities.

The Airport Conference

President Eisenhower furnished me a military planeto fly to McClellan air base near Sacramento, California, for the meeting with Governor Warren. The Governor returned from a week-end hunting trip to meet me at the air base where we conferred about an hour and a half. After I had explained my mission, Governor Warren stated that he had been highly gratified when President Eisenhower originally had called him about the "first vacancy" on the Court, and now that the vacancy had occurred, he would be extremely honored to be nominated to the Chief Justiceship. It had been, he said, a life long ambition of his, to be appointed to the Supreme Court. He said he would prefer to accept the Supreme Court nomination immediately, rather than

become Solicitor General with a view to later appointment to the Court.

We did not discuss any issue that might come before the Supreme Court in the event he became Chief Justice. I mention this because there were erroneous statements made by Southern senators afterward that we "might have" discussed civil rights, including the school integration problem.

During the course of our airport conference, Governor Warren volunteered that he had followed the reports of positions taken by President Eisenhower since his inauguration with great interest and was in accord with the policies of the administration as they had unfolded. He also stated that he, by reason of the fact that he had previously accepted the suggestion that he be Solicitor General, had already made arrangements to leave the governorship and, thus, if appointed to the Court, was prepared to take his place in the Court at the opening of its fall session.

I then took the opportunity, although I had not previously discussed this with President Eisenhower, to discuss with Governor Warren the proper relationship between the Department of Justice and the Judicial

Conference of the United States which is an administrative body presided over by the Chief Justice and consisted at that time of senior members of the various federal circuit courts of appeal. When I assumed the Attorney Generalship, there was a strained relationship between the Department and the Judicial Conference due to the fact that, although the preparation of the budget for the federal judiciary had shortly before been removed from the jurisdiction of the Justice Department, there still were instances in which some of the senior judges felt that the Department exercised control over areas that were more properly within the province of the judicial branch. My position, as expressed to Governor Warren, was that the Judicial Conference needed to enlarge its membership by addition of younger judges, and needed more vigorously to press for changes in methods of administration of the federal judicial system. I believed that this would require strengthening of the Administrativ Office of the U.S.Courts which was then operating on a very small budget. I found that Governor Warren was entirely in accord with this point of view and after he became Chief Justice he furnished the necessary leadership to effect such changes.

The Appointment

I returned directly to Washington after the airport conference and the next day reported on Governor Warren's statements to President Eisenhower and reviewed with him the results of my thorough investigation of Governor Warren's public record. He decided to appoint Governor Warren. I recommended that he authorize me to have an off-the-record conference with a number of newspaper reporters to give them the background material which would enable them to write a comprehensive story of the appointment when it was announced by the President. I held such a meeting at my home with a group of six or seven reporters and although I considered it a background conference, the write-ups the following morning stated positively that Governor Warren's appointment would shortly be announced. Both President Eisenhower and I were surprised by the unqualified nature of these predictions and this advanced the President's plan to announce the appointment, which he did almost immediately.

Governor Warren at once completed his arrangements to come to Washington and shortly before the opening of the court term, he arrived and was met at the airport by President Eisenhower. We in the Department

of Justice gave an informal reception for Governor Warren and the members of the Supreme Court at the Department of Justice. On the opening day of court, with the President in attendance, Governor Warren was sworn in as Chief Justice. The public reaction to his appointment was almost completely favorable.

I have been asked about reports that a commitment by or on behalf of General Eisenhower was made, prior to the election of General Eisenhower as President, to offer a position on the Supreme Court to Governor Warren. These reports at various times embarrassed both General Eisenhower and Governor Warren for the obvious reason that any such "deal" was entirely contrary to the demonstrated standards of conduct of both men. I am confident that none of the reports was well-founded. I myself never paid much attention to these reports because such speculation on appointments to fill vacancies in high public office are standard procedure for political reporters. Most of these reports originated in California, both before and after President Eisenhower's inauguration -- they were written largely as speculative pieces about possible changes in the California political power structure. Also

during the campaign, various well-meaning volunteers would suggest Warren as a possible cabinet member or member of the Supreme Court in the event of Eisenhower's election and assure us they believed he would be interested. We believed such self-appointed emissaries to be unauthorized to speak for Governor Warren. President Eisenhower made it plain in his book, "Mandate for Change," that no promises or commitments for appointments were made or discussed with authority from him prior to the election.

Confirmation Delay

The President's recess appointment of Governor Warren as Chief Justice was dated October 2, 1953, but his confirmation as Chief Justice by the United States Senate did not take place until March 1, 1954. At first, no special thought was given to the delay in confirmation proceedings but it gradually became evident that Senator William Langer of North Dakota, who was Chairman of the Senate Judiciary Committee, was opposed to the confirmation and was using the authority of his position to delay confirmation hearings and to encourage opponents of the confirmation to testify in opposition to confirmation. He defended his position in an extended speech printed in the Congressional Record of February 19.

The letters that came directly to the Justice Department before and after the announcement were generally favorable but some opposition developed. A professor of law at the University of Virginia wrote:

> "Of course I have read the gossip indicating that Governor Warren may be named either to succeed Chief Justice Vinson or to a position on the Ninth Circuit bench. In Heaven's dear name, why? The man has had no judicial experience, and he is not a lawyer in any proper sense of the term. And I cannot believe that the President owes him anything. If that appointment is made, it will almost rank in flagrant inappropriateness with the --- and --- designations, which certainly achieved an all-time low."

Some professional opinion was expressed publicly against the manner of the appointment. For example, the Harvard Crimson carried quotations from five professors of the Harvard Law School objecting to the Chief Justice sitting before he was confirmed. One professor wrote:

> "If Governor Warren takes his seat as Chief Justice next Monday and then proceeds as a temporary judge to participate in the decision of cases before his nomination has been confirmed by the Senate, he will in my judgment violate the spirit of the Constitution and possibly also its letter. No doubt the technical question is open to debate.... The permanent appointment will be subject to three future contingencies: (1) the decision of the President

> to forward his nomination to the Senate; (2) the decision of the President not to withdraw the nomination before it has been acted upon; and (3) the decision of the Senate to confirm the nomination. ... I can not believe that the Constitution contemplates that any Federal judge, let alone the Chief Justice of the United States should hold office, and decide cases, with all these strings tied to him. ... Certainly the famous early example of John Rutledge who sat as Chief Justice and then failed of confirmation, does not prove the propriety of the practice. It provides instead a vivid illustration of its dangers and impropriety."

A nationally prominent California attorney and former President of the American Bar Association who had had political differences with Governor Warren, wired:

> "I call ... the President's attention to the fact that Warren is not a Republican, he is not a lawyer nor an executive in the sense of the judiciary. Thousands of Americans and thousands of lawyers look to this administration to cease the unconscionable practice of putting politicians on the federal bench."

As weeks went by, the President became disturbed at the failure of the Chairman of the Senate Judiciary Committee to allow a hearing on the confirmation. He requested the Justice Department to use its best efforts to expedite hearings and final vote on confirmation. Deputy Attorney General William P. Rogers who later became Attorney General and thereafter Secretary

of State, acted for the Justice Department at the confirmation hearings.

Senator Langer meanwhile had sent Judiciary staff investigators to California to check a batch of letters received by the Committee objecting to the Warren confirmation. The opposition was confined to a small but noisy group. The subcommittee of the Senate Judiciary Committee convened on February 19, 1954 and consisted of Senator Langer, Chairman, and Senators Watkins, Hendrickson, Eastland and Hennings. The main "charges" were based upon statements of Dr. Wesley Swift, head of the Christian Nationalist Crusade in Los Angeles, Burr McClosky, National Executive Committee of American Rally, Chicago, George McLain, Chairman of the National Institute of Social Welfare, and Roderick J. Wilson, later described in the press as a fugitive from justice. The charges were as follows:

> "1. That the nominee was at one time 'under the domination and control of a notorious liquor lobbyist' (Arthur Samish).
>
> "2. That the nominee has had improper connections with 'the czar of illicit enterprise in California.'
>
> "3. That the nominee as Attorney General and Governor 'permitted organized crime

to establish national headquarters in California.'

"4. That the nominee, as Governor, wilfully protected corruption in his administration, and visited reprisals upon those who complained of such corruption.

"5. That the nominee lacks sufficient judicial experience.

"6. That the nominee has a '100 per cent perfect record of following the Marxist revolutionary line.'

"7. That the nominee is 'biased for the AFL labor monopoly.'

"8. That the nominee, when he was State Attorney General, was guilty of nonfeasance in failing and refusing to bring about prosecution in the case of more than 1,000 bookmaking violations concerning which evidence was presented to him.

"9. That the nominee, while Governor, 'owned and operated' an 'escrow racket.'

"10. That the nominee, while Governor, 'knowingly appointed dishonest persons as judges and thereafter elevated them.'"

As a result of these and similar unsupported allegations, Senator Olin Johnson of South Carolina demanded an unprecedented full FBI investigation of Governor Warren before the Committee voted upon his confirmation as Chief Justice. Other members of the Committee denounced the "charges" as "tommyrot" and "rubbish."

The affirmative testimony was powerful. Senator Knowland of California stated:

> "I have known of no man during my time in public life for whom I have a higher regard as to his integrity and his devotion to the public service and his ability to handle any job that he has been selected to fill.... He has the legal capacity"

[for the position for which he has been nominated.] The other Senator from California, Thomas Kuchel, vigorously supported the nomination in a comprehensive review of Governor Warren's public career.

Honorable Herbert R. O'Conor, Chairman of the Special Committee to Study Communist Tactics of the American Bar Association wrote:

> "It has been brought to the attention of our Committee that certain representations have been made in connection with the nomination of Chief Justice Earl Warren by a spokesman for an anti-Communist organization.... It is our considered judgment that there is no foundation in fact for any allegation that the nominee while Governor of California was indifferent to the challenge of Communism.... He has proved his steadfast Americanism both by word and deed."

He pointed out that the American Bar Association had selected Governor Warren as one of the three outstanding Americans who had distinguished themselves in the maintenance of the highest standards of law.

The Standing Committee on the Federal Judiciary of the American Bar Association urged the confirmation and stated that Governor Warren was

> "well qualified ... and should be confirmed.... He has been subjected to the most searching and critical examination of the Bar and it is a great pleasure to report that he has presided over the Court with great dignity and distinction which gives assurance that if he is confirmed he will continue to grace the Court after the manner of its great Chief Justices."

The Board of Governors of the State Bar of California wrote that it

> "unanimously and without reservation approves the qualifications of Earl Warren as Chief Justice of the United States. The Board of Governors believes that the same opinion is overwhelmingly the opinion of the lawyers of California."

After conclusion of the subcommittee hearings, there were press stories to the following effect:

> "Senator Langer maintains that there is no connection at all between the slowdown on the Warren appointment and the fact that the White House recently named four North Dakota postmasters without consulting him. Nor, he insists, is he upset about the White House refusal to appoint a Langer candidate for federal judge."

At this point President Eisenhower spoke out in support of Governor Warren's confirmation. At a press conference he stated:

> "My high opinion of Governor Warren and confidence in him is demonstrated by the fact that I nominated him to one of the highest offices in the land. I did this on the basis of my knowledge of him and my appreciation of his great qualities. Every contact I have had with him since he came to Washington and all I have heard about him has served only to increase my confidence in him and my high opinion of him. I think he is one of the finest public servants this country has ever produced."

This statement brought quick action by the subcommittee which voted to send the nomination to the full Senate Judiciary Committee on February 20th. The full Committee voted favorably on the confirmation and thereafter on March 1, 1954 the full Senate confirmed the appointment unanimously.

Warren as Friend and Associate

My personal friendship with the Chief Justice continued until his death. I soon learned, after his arrival in Washington, that he was an ardent college football fan and one of the first weekends he was there we went over to a University of Maryland football game. I soon discovered that he was handicapped in the performance of his official duties in Washington because

of the fact that the Supreme Court budget did not allow the Chief Justice an official car and driver. So I arranged for him to use a Department of Justice car and driver until we were later able to arrange an appropriation for such service for the Chief Justice.

One of my pleasantest personal experiences with him came at the time of the American Bar Association meeting in London in the summer of 1957. Mrs. Warren and he and Mrs. Brownell and myself shared a table with the David Maxwells (then President of the American Bar Association) on board the liner which took us to Southampton. After the American Bar meetings were completed, Governor Warren and I travelled to Dublin where we spent a couple of days sightseeing and both received honorary doctor's degrees from the National University of Ireland, Dublin, from the hands of former President Eamon DeValera.

Shortly thereafter, I resigned as Attorney General and returned to practice law in New York City. I became President of the Association of the Bar of the City of New York and, in that capacity, had the great satisfaction of having the Chief Justice made an honorary member of the Association. He came to New York for the event and we had dinner at our apartment after which we went to the Association for the ceremonies.

At that time, the so-called "impeach Earl Warren" campaign was at its height and the streets outside the Bar Association building were mobbed with a large gathering with banners demanding his impeachment. He took this experience in good grace and it did not interfere in any way with the conduct of the ceremonies or the speech that he delivered that night to the Association membership at one of the largest meetings in its history.

On an official level during my term as Attorney General, the Chief Justice was generous in giving his time and energies to promote the various projects of the Department of Justice for improvement in all aspects of federal court administration. For example, he made the principal address at the National Conference on Parole instituted by the Department in Washington in April of 1956. He cooperated to the fullest extent in the efforts of the Department to eliminate the backlog of cases in the federal districts and furnished leadership in the efforts of the Department to increase the number of federal judges and obtain more flexible methods of temporarily transferring judges from one circuit to another to meet emergency situations. At his invitation

I regularly attended the semi-annual meetings of the Judicial Conference to discuss matters of mutual concern between the Department and the judicial branch of the government. I was especially pleased to have the Chief Justice appoint Warren Olney, who had served during my Attorney Generalship as Assistant in Charge of the Criminal Division, as head of the Administrative Office of the U. S. Courts where he effected many of the changes that Governor Warren and I had discussed at the time of his appointment as Chief Justice.

APPENDIX

An Interview with Herbert Brownell

Conducted by Amelia R. Fry

October 29, 1974

THE 1952 REPUBLICAN CONVENTION'S CONTESTED DELEGATIONS
(Date of Interview: October 29, 1974, New York. Also present: daughter Ann Brownell Sloane.)

Fry: I would like to start with some things around the convention that concerned Warren, Warren's role and his motivation.

Brownell: The '52 convention. All right.

Fry: The first one would be that Fair Play Resolution on the contested delegations.* I talked to Judge Stanley N. Barnes just before I came out here, as you know, and he said that you were the person most responsible for raising questions about these contested delegation rules. So I thought that would be important for us to get into, because later on that determined the outcome of Warren's candidacy in the whole thing.

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*Background Information on that Taft/Ike Delegations Contest (The Fair Play Resolution):

Monday, July 7. Convention opened. The first vote by whole convention was on the amendment to bar 68 disputed delegates from voting, mainly from Georgia, Louisiana, and Texas. (Actually there were 72 in all--4 from scattered states) Just before this vote, the Republican National Committee had voted 60 to 41 to accept Taft's compromise proposal that would give Eisenhower 16 delegates and Taft 22 of the Texas delegation. The floor vote to bar the disputed delegates from voting was 658 to bar them, 548 not to bar them.

Tuesday, July 8. The Credentials Committee Hearings started. Taft agreed to concede Louisiana delegates to Ike, but not Texas and Georgia. Credentials Committee voted to seat most of the Taft delegates. Hearings were televised, and wore on into the night.

Wednesday, July 9. Credentials Committee ended hearings. That evening the whole convention voted 607 to 531 to seat Ike delegates in Georgia--the real test vote.

Brownell: I think that's true. I guess it was in the spring of 1952 that I decided the outcome of the convention was going to depend upon whether the contested delegations could vote on the question of whether or not they were to be seated. And so I studied the record of the 1912 Republican Convention where the same problem was raised. At that convention Elihu Root had been chairman, and he had ruled that the contested delegates could vote on whether or not they should be seated.

That seemed to me a very unfair procedure. In this case, it would obviously have meant that Taft was going to be nominated because the vote was that close. So I developed a strategy, I guess you'd say, for the convention to have the Fair Play Amendment, which was nothing more nor less than a change in the rules of the convention that the contested delegates could not vote on whether or not they should be seated.

Governor Warren, among others, agreed that we were on the side of the angels, so to speak, and that he would vote the California delegation in favor of the amendment.

Fry: When was this?

Brownell: It must have been in the spring of '52, of course. It was certainly before the Texas convention, which was in May, because we were preparing the way for the Fair Play Amendment at the time of the Texas convention, and our strategy down there was leading up to the introduction of the Fair Play Amendment. So it was before then.

He agreed to go along with the Fair Play Amendment, as did [Harold] Stassen and [Theodore R.] McKilden, who were also favorite son candidates. In that way, we had a majority of the delegates pretty well assured, although it wasn't generally known before the convention that this vote would be taken. As I say, it was a very decisive vote because it showed that Taft didn't have a majority of the votes tied up for the nomination, and so the wavering delegates were very much impressed with that, and it turned out to be the crucial move in the convention itself.

The reasons I felt that I could talk to Warren were several. One was, I knew him real well--he had been the vice presidential candidate on the Dewey ticket in 1948 and I was the campaign manager then--so I knew him real well and I

Brownell: had a fine relationship with him. I knew that I could talk in confidence to him, because we didn't want this strategy to get out.

Also, I knew that he would feel that it was a good move so far as his own candidacy was concerned. I believe he felt that there was a reasonable chance that the convention would deadlock and that he would be nominated. So it was to the advantage of his campaign that there shouldn't be a fast nomination of Taft, which I think would have happened but for this strategy.

Fry: Yes, it does look like this equalized the numbers a little.

Let me clarify something here in my mind. Did Earl Warren agree to speak to his delegates for the Eisenhower Fair Play Amendment, or was he just agreeing to go along with the idea of the new rules to put the whole thing before the convention for a vote?

Brownell: Only the latter. But I think he did vote at the Governors' Conference for the manifesto, so to speak, yes.* All the Republican governors voted for that. That was the only public indication before the convention that he was going to go along and vote the California delegation in favor of the Fair Play Amendment.

Fry: Some of the papers from the Taft side of this** seem to indicate that the Taft figures along about this time, in the spring, looked very optimistic and they didn't seem to feel that there was much threat--

Brownell: I think that's true.

Fry: Do you think they were aware that the contested delegations would probably go to Eisenhower?

Brownell: No, I don't think so; I don't think so. They weren't aware of the Fair Play Amendment idea at all, and I think they always

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*23 of 25 Republican governors signed the manifesto at the governors' convention at Houston, Texas, June 30, 1952. This was a vote to bar contested delegates from voting on whether they should be seated.

**Carlson papers, Kansas State Historic Society.

Brownell: counted on the fact that they could compromise--get some of the votes from Texas, Louisiana, and Georgia, and that that would be enough to put them across.

Fry: And split the contested delegation votes.

Brownell: Yes. And they made active overtures to that effect, and we rejected them before the convention and we rejected them at the convention.

Fry: Were you at the caucus of the California delegation on this?

Brownell: No.

Fry: That interests me about the Taft idea of splitting it because this is what Senator Knowland suggested to the California delegation in their caucus: that they not vote as a unit--which would surely seat the Eisenhower delegates from those contested states.

Brownell: Yes. Well, he was working for the Taft people in effect. I felt that all along, yes. I don't mean to say he was disloyal to Warren, because if there had been a chance--if it had turned out that Warren had had a chance, I'm sure he would have worked very hard for him. But as between Taft and Eisenhower, he was for Taft.

Fry: Do you know what Warren did in the caucus--what he said to the delegation?

Brownell: No.

Fry: Some accounts say that he really didn't say very much and left it up to the members to vote the way they saw it.

Brownell: I have no idea about that, as to what actually happened at the caucus.

Fry: By the time that caucus occurred, the situation had changed so that, I think, if the California delegation had voted for these Taft delegations, then it would have led closer to the deadlock that Warren wanted. Is this what you remember about the reception of --

Brownell: If I understand you, I think if they had voted against the Fair Play Amendment, it would have resulted in Taft's nomination.

Fry: Or a deadlock?

Brownell: I don't think so. I think it would have been enough for Taft to be nominated.

Fry: Were you at all aware that Knowland had proposed a split in the California delegation?

Brownell: Yes, because it was not a new idea; they'd been working on it for several months, for all the different delegations, including California. We didn't have any votes to lose; we had to be against it.

Fry: The main person who made an eloquent plea in the California Caucus on behalf of the Eisenhower delegates in Georgia and Texas was Nixon, apparently. This seems to be fairly well established in a number of different accounts.

Brownell: Was that directed to the amendment itself?

Fry: That was the caucus that was held before the convention vote for the Fair Play Resolution, I think.

Brownell: And he supported the Fair Play Resolution.

Fry: He supported it, yes.

Brownell: He was reflecting Governor Warren's views.

Fry: And as I understand it, I think he was also urging them then to go ahead and seat the Eisenhower delegates.

Brownell: I've heard that, but I never was able to verify that. There were talks that on the train coming east with the California delegation, he had supported Eisenhower. But I never was able to verify that. I think the floor vote, of course, of the California delegation, I think, was solidly for Warren on the nomination, right straight through. I don't think they ever changed. So if Nixon did, he wasn't able to influence anybody, and he himself didn't vote for Eisenhower on any ballot.

PUTTING EISENHOWER OVER THE TOP

Fry: Yes. Earl Warren says that at first tally, when Eisenhower was short by 7 or 8 votes, he refused to release California's vote for that purpose of putting it over.* And then--

Brownell: That's right.

Fry: And then I have some indications that Knowland was very eager to get those California votes released and switched, when he saw that it was going to go for Eisenhower, and get California in there as the state that put it over. Do you know anything about--

Brownell: I don't know.

Fry: --what happened in just those few minutes' time?

Brownell: I don't know how they lined up then, but it would be a pretty orthodox thing to do, if they saw they were going to be the state who was responsible for the nomination: they'd get quite a lot of kudos out of that politically, so I wouldn't be at all surprised if Warren was urged to do that. But he didn't do it.

Fry: Warren says, "I wanted the record kept straight that I would not turn my delegation over to another candidate and would not permit anyone else to do so." **

Brownell: That sounds right to me. Yes.

Fry: So that brings up the question, then, of why Earl Warren was chosen for Chief Justice, especially in the light of any sort of repayment for his help in this. Time magazine has a quotation that goes "Any debt that Eisenhower owed Earl Warren could be paid off by a third-class postmastership."

Brownell: Yes. There was nothing at the convention that made Eisenhower politically indebted to Warren.

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*It was Harold E. Stassen's delegation who, after the first tally (595 for Ike) managed to get the chair's attention and switch the Minnesota votes to Eisenhower, giving him the needed number for nomination on the first ballot.

**From Earl Warren's Autobiography manuscript, in process, to be published by Doubleday.

WARREN AS CAMPAIGNER, 1948 AND 1952

Fry: A number of people seem to think that Warren was not very active in the campaign, or he wasn't as active as he could have been; Leo Katcher, for instance, talks about a "freeze" after the convention, in his book, Earl Warren, a Political Biography. [page 294]

Brownell: I was not active in the campaign until--when was it, Ann?

Sloane: Early October. No--late September.

Brownell: Late September, yes. But after I was in the campaign--those last six weeks or whenever it was--Governor Warren was quite active. As a matter of fact, I think right after the nomination, he chaired a meeting of the Republican governors of the western states, and Eisenhower went with him. Then after that, Eisenhower went through California under his auspices. And then late in the campaign he appeared with him, I think it was in Chicago, on a television broadcast. I would say that he did what you'd normally expect a Republican governor to do under those circumstances. He was sympathetic with the Eisenhower cause and he, I would say, actively supported it.

Fry: Did you talk any with Earl Warren during this campaign?

Brownell: After the convention?

Fry: Yes.

Brownell: I think I did. When Eisenhower went through California, whenever that was--I think it must have been October--and I'm quite sure that I talked to him at that time just to see if everything was under control and the plans were all made.

Fry: The plans for what?

Brownell: The plans for the meetings. That would have been by long distance telephone, though; I did not go out there during the campaign.

Fry: What was the reaction to Warren meeting Truman, publicly welcoming him to the state and appearing on the platform of the train with Truman? And then he also let Adlai Stevenson use the steps of the state capitol for his address.

Brownell: I think that was perfectly orthodox. It wouldn't be anything you wouldn't expect a governor to do in his home state to an important person of that kind, a candidate. I think it's normal for a governor to meet the opposition candidate when he comes to the state capitol.

Fry: Was this the thinking at that time?

Brownell: I don't know; I'm just surmising.

Fry: Where were you before the last six weeks of the campaign?

Brownell: I was right in this room.

Fry: In your office?

Brownell: Yes. I was not in the campaign until then. Then I was called back in. But I left at the conclusion of the convention and then was out until the latter part of September.

Fry: Why was this?

Brownell: I thought my job was done. But I was asked to come back by Eisenhower.

Fry: Because at that time, you had all this experience from the 1948 Dewey-Warren campaign; I should think they'd want you right there from the very first.

Brownell: Well, I could have stayed; I could have stayed. But it was my third campaign, and I thought it was very clear that Eisenhower was going to be elected and that the big battle was over at the conclusion of the convention.

Fry: And you were right. [Laughter]

Brownell: Yes, as it turned out.

Fry: You read those notes I made up from some of the interviews from the Eisenhower Library, and Ralph Cake [National Committeeman from Oregon] said that Warren had done practically nothing in the campaign. A number of people have spoken about the intermediaries that were sent to talk with Warren at this time. Was that before then, that you entered? Had all of this pretty much been settled, or was there still some persuasion to do?

Brownell: I think that Ralph Cake and Sherman Adams and Arthur Summerfield undoubtedly made some approaches to Warren to get him to barnstorm around the country. Perhaps even go on the train with Eisenhower, but after all, he'd been a candidate for vice president before, and he knew what was important, and I don't think he thought that that was where he could do the most good. As I recall it, didn't he make a speech up in Minnesota? I think I asked him to do that. I thought that was one place, with the big Scandinavian vote, where he could be most helpful. And he did it. I think I was the one who asked him to do that. But I never could see any signs that he didn't play a full part.

Fry: Or that he was reluctant?

Brownell: Or that he was reluctant. No. He was a reticent fellow; he didn't just go around slapping people on the back or anything like that. He didn't conceive that as his role, and he couldn't have done it well if he had tried it. I would never have thought of that as being the way he would campaign.

As a matter of fact, when he was running for vice president, he didn't campaign that way. And a lot of political leaders don't like that. They think you ought to go to every cocktail party and every rally and everything else. He was too big a man at that time to do it. He was one of the really top leaders of the Republican party. He played the same role, I would say, in the Eisenhower campaign that Charles Evans Hughes did in the Harding campaign--things of that sort. Thoughtful speeches were his contribution to the campaign. He was very meticulous--always was, in '48 and '52 both--to see to it that the Republican platform was thoughtfully presented to the electorate. He had that kind of an approach to the campaign, and that's where I always thought he made the most useful contribution. He was always very critical, in prior campaigns, if a candidate didn't present the whole platform to the people and discuss it seriously. Very thoughtful in that regard.

Fry: Yes. I think I have a letter here that he wrote to you. You had telegraphed, I guess to a number of people--this is November 5th, 1945--saying "Policy is being prepared by our members in senate and house and may be ready for presentation to national committee meeting in Chicago December 7th. If you have not already given your views to Republican congressmen from your state, please send them to me for presentation." And here is

Fry: what Earl Warren replied to you. [Gives Brownell letter.*]

Brownell: For goodness sake.

Fry: This came up in the papers that are in Sacramento at the state archives.

Brownell: Isn't that interesting? He said, "I think one of the first things we should do is review our national platform to see if the Republican group in congress has conformed," and I know he thought they did not. Of course, that was one of our big problems, both in 1944 and 1948 when Dewey was running. He ran on the platform and they opposed important parts of it. This certainly expressed in a letter the views that he expressed to me orally from time to time over a period of ten years.

Fry: He delighted in reminding everyone that the Republican platform included a statement backing health insurance.

Brownell: Yes--certainly social security. I think social security. We'd better have a copy of that, Ann [Brownell's daughter, Mrs. Robert B. Sloane].

Sloane: Yes. We just made a contract. [Laughter]

Fry: That's right. We've got it on tape that I'll give her a copy. [Laughter]

So that Warren's position was a very literal application of the platform. While we're talking about his campaigning, there are two other questions I want to ask you. The first--was Warren chafing at the bit and wanting to say more during that 1948 campaign?

Brownell: There were disagreements between him and Dewey along this same line. He wanted Dewey to spend more time talking about social security, and there were one or two other points where he was more liberal than Dewey, or at least he was more liberal than Dewey's campaign speeches.

Fry: What were those points?

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*See letter insert, with telegram. Next page.

For Mr. Brownell

approp. Sherman Adams' statement that Eisenhower "should have delved more deeply" into Warren's past attitudes.

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HON EARL WARREN

STATE CAPITOL

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CONFIDENTIAL A STATEMENT OF REPUBLICAN PARTY POLICY IS BEING PREPARED BY OUR MEMBERS IN SENATE AND HOUSE AND MAY BE READY FOR PRESENTATION TO NATIONAL COMMITTEE MEETING CHICAGO DECEMBER SEVENTH IF YOU HAVE NOT ALREADY GIVEN YOUR VIEWS TO REPUBLICAN CONGRESSMEN FROM YOUR STATE PLEASE SEND THEM TO ME FOR PRESENTATION

UNION

TO DRAFTING COMMITTEE

HERBERT BROWNELL JR CHAIRMAN REPUBLICAN NATIONAL COMMITTEE.

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Natl Republican Organizations

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November 6, 1945

Mr. Herbert Brownell, Jr., Chairman
Republican National Committee
45 East 45th Street
New York 17, New York

Dear Mr. Brownell:

I have received your telegram inviting an expression of views in regard to Republican Party policy.

I think one of the first things we should do is to review our national platforms to see if the Republican group in Congress has conformed.

Then I think we ought to have a definite program for producing the sixty million jobs that both candidates discussed in the last campaign. I believe also that we should have a definite program on social security, a program for improving the health of our people, the conservation of our natural resources, and an anti-monopoly program.

Unfortunately, we are being held up to the public as the Party that opposes legislation in these fields. I do not believe it is sufficient to oppose the proposals of the administration even where they are ill-advised. We must have an affirmative program which we offer to the public for the solution of our basic problems. Until this is done it will be difficult to convince a majority of the people of our desire and ability to raise the standards of American living.

I am happy that this survey is being made because for a long time I have been convinced of its immediate necessity.

With best wishes, I am

Sincerely

Governor

EW:fh
VS
Via Airmail

From the Earl Warren papers,
California State Archives

Brownell: Social security was one. I think that was worked out in the speech that Dewey made in Los Angeles late in the campaign.

Sloane: The Hollywood Bowl speech.

Brownell: The Hollywood Bowl speech, which proved that Dewey was right politically and Warren was right on the merits. [Laughter]

Fry: And what was the other point? Was it the Taft-Hartley Act?

Brownell: I don't think so. What was the other? Do you remember, Ann?

Sloane: No, I don't.

Brownell: I'd have to dig around, because the feeling in my bones is that there were two of them. Maybe it was aid to education.

Sloane: It was probably education--California went all out on aid to education, and that was [inaudible] the speeches that Dewey made, it seems to me.

Brownell: Yes. That sounds reasonable to me.

Fry: That's interesting. When you get the transcript back, you can--

Brownell: Yes. I'll try and look that up.

Fry: The other thing was, you said that Warren wasn't the back-slapping type of campaigner. How would you characterize him, positively, as a campaigner in his manner, his relationship to crowds and to people?

Brownell: He was not a crowd-gatherer and he didn't play up to the crowd. His were almost lectures, his campaign speeches, I always thought. They were very thoughtful and very much in line with the Republican platform, but in private conversation he was as friendly and genial and as attractive as you could be. So was his wife. But in the speeches, he didn't rouse the rafters at all.

Fry: Warren says that he did receive occasional calls from Eisenhower's organization (this is after the election but before Eisenhower took office) just checking out people who were under consideration for appointment. The only cabinet-level position he remembers being consulted about was Secretary of the Interior, McKay. That raises a lot of other questions, like what else was Warren consulted about.

OFFERS TO WARREN OF A SUPREME COURT JUSTICESHIP

Brownell: It was during that period, between election and inauguration, that Eisenhower first talked to him about the Supreme Court.

Fry: Was that when it was? Then all these other surmises of an earlier time are wrong. Was anything held out to Warren to induce him to come aboard on the campaign?

Brownell: No--certainly no authorized statements made to him. I don't know about the volunteers. I remember people would come to me all the time and say, "I talked with so-and-so and he's very--we told him we sure loved him and we wanted him with us." I don't know what people like that might have said to Warren, but they were all self-starters trying to get something for themselves, to show how important they were, that they could get in to see Governor So-and-so or Senator So-and-so. I don't count any of that at all.

The first time that Eisenhower talked to Warren was in November or December, after the election, before the inauguration, before we went to Korea.

Sloane: Before he went to Korea, and that was late November.

Brownell: I had my office a couple of doors from him in the Commodore Hotel in New York City. Eisenhower came in to me and said, "We're now completing the cabinet and I want Governor Warren to know that we consider him a part of the Eisenhower team, so to speak."

Sloane: Did he mean on the cabinet?

Brownell: No, and he followed that--no, it was not cabinet. He followed that by saying, "I think he'd be a good man on the Supreme Court. What do you think?" I said that I certainly did too. He said, "Why don't we call him and tell him that we're closing up the cabinet, but that doesn't mean we haven't been considering him for a high post in the administration. I think I'll just say to him that I have him in mind for the first vacancy on the Supreme Court." So he put in the call from my room and I listened to his end of the conversation. It was, I judged, a very friendly one. Of course, I don't know what Warren said. I do know that he definitely said at that time that he would like to appoint him to the first vacancy in the Supreme Court.

Fry: There is a man who was a close secretary to Earl Warren--"Pop" Small (Merrell F. Small)--who later became Senator Kuchel's administrative assistant when Warren told him that he thought he would not be much longer in the job as governor of California. And he swears that Warren told him it was September 15th when he got that call from Eisenhower.

Brownell: Well, I know that's not so because, as I say, it was in my room and I was--

Fry: And you can pinpoint it?

Brownell: Yes.

Fry: Also, Judge Barnes connects it to a meeting on a battleship maybe--

Sloane: I think the 25th of November was--

Fry: Yes, maybe during that Korea trip, and there was a meeting of the top aides to make political decisions. Can you connect that with anything?

Brownell: No. I was there also.

Fry: He was very hazy about this.

Brownell: That would be speculation, I think, because I was on the battleship, and while it may have been talked about, it was not in my presence.

Fry: That was <u>after</u> the call from your office anyway.

Brownell: That was afterward anyway, yes. But I'm sure I could pin that down to the first time the two ever talked about it and that it was definite.

Fry: Is it true or not, then, that you and Knowland discussed the possibility of appointing Warren on the campaign train?

Brownell: No. In the first place, I was never on the campaign train.

Fry: Do you think Eisenhower discussed it with Knowland?

Brownell: No, I don't. I don't know that for a fact, but he's not the kind of fellow that--that's not the way he did things. It

Brownell: could be that Knowland spoke to him about it; I don't know. I think Knowland would have spoken to me about it if he had, because we had that kind of a relationship.

Fry: More than Knowland and Eisenhower did?

Brownell: Yes.

Fry: In Earl Warren's files that have just been opened, there's a letter from Robert R. Barry* that is from Bronxville, New York. Who is this guy?

Brownell: [Laughing] He's the one that I mentioned as being one of those that came in to me and said, "I talked to Earl Warren and I told him he'd make a fine this or that" (I don't know what it was he told him). But he's a self-starter.

Fry: That makes sense.

Brownell: It couldn't have been more unofficial.

Fry: In these letters from Barry, the one on May 16, 1952 apologizes, saying that he doesn't want Warren to feel that he was pressuring him to come aboard the Eisenhower campaign. I thought we'd better find out who this man is, because I had run across the same name supplying information from California to the Eisenhower campaign; that's in the Carlson papers for the primary.

Brownell: He was a self-starter. Was he congressman one term, Ann?

Sloane: Yes. I can't remember if he was a congressman out there and ran here [New York], or he was a congressman here and ran out there later.

Fry: Out where?

Brownell: He was a congressman here and then ran out in California later.

Sloane: Yes. And he lost here; he lost out. Conservative Republican. Then he didn't win out there.

Fry: He was a conservative Republican?

Brownell: I don't know about that.

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*See letter insert, following page.

This is marked: "For filing — no reply. V. Scoggins"

29 HEREFORD ROAD
BRONXVILLE, NEW YORK

May 14, 1952.

Dear Governor Warren:

Last October I called upon you to say that I was contemplating a trip to Saint to confer with General Eisenhower, and that I should be delighted to convey a greeting or message to the General should you have so desired. Your Mr. Scoggins chatted with me about the political situation as it was then shaping up and I told him that in my opinion the contest would narrow down to Taft and Eisenhower.

Somehow it has gotten about that I held a hammer over your head to the effect that you come aboard the Eisenhower team then or else! I see little but grief in tracing the source of such a preposterous rumor, but I am very anxious that the record be cleared to stamp out this fallacious impression.

You made it clear to me at the Fairmont Hotel last October that you would not talk concerning General Eisenhower unless I had a letter from him asking that you do so. Late in November in the course of exercizing my responsibilites as a citizen, I expressed to General Eisenhower that I held tremendous esteem for your administrative ability and that your biography was one of the most interesting accounts I have read on the great struggle to eliminate organized crime. I stated to him that in my opinion the nation was fortunate in having as one of its great leaders someone of your organizational ability who at the same time possessed exceptional experience in law enforcement. I further told him that the internal integrity of the nation could best be restored by prevailing upon you to continue sacrificing yourself in the public service by asking you

29 HEREFORD ROAD
BRONXVILLE, NEW YORK

to serve as Attorney General of the United States should he be elected the next President. I concluded this phase of our talk by stating that such a financial sacrifice on your part and that of your fine family could be partially relieved by nominating you to the first available opening on the Supreme Court of the United States. In making my statement to the General I made it clear that I was acting entirely on my own, and when he appeared intensely interested in what was said I offered to send him my copy of Irving Stone's biography of you.

In view of my great faith in you I cannot believe you would allow the record to stand in California that I am against you or that I made the slightest attempt to demand your coming aboard the Eisenhower campaign-however desirable that may have been and continues to be.

I greatly enjoyed meeting you and your family at the Republican luncheon in New York and would have called on you last week when in California on mining and ranching matters except for the fact that you were in Oregon.

With great good luck and I should very much enjoy hearing from you.

Sincerely yours,

Robert R. Barry

Robert R.Barry

His Excellency, Governor Earl Warren
Sacramento, California

Sloane: In terms of the primary, he held a conservative position.

Fry: That will explain his letters in Warren's papers, with a certain perspective.

CHOOSING THE SUCCESSOR TO CHIEF JUSTICE FRED VINSON

Fry: Warren was offered apparently the solicitor generalship--isn't that right?--in the summer of '53.

Brownell: The story on that was that when I was having a hard time getting a solicitor general, I talked to Eisenhower about it. He then called me back a couple of days later and said that he'd been thinking about that, and that, as I had remembered, he had told Earl Warren that he was going to offer him the first vacancy on the Supreme Court. I said yes, I remembered that. He said he'd been thinking about the fact that Warren hadn't had any active legal experience in recent years since he'd been attorney general of the state; that was his last active legal job. Why wouldn't it be good from all standpoints to have him as solicitor general? It would prepare him for his work later on the Supreme Court, and he certainly had the standing and was qualified in every way.

I was enthusiastic about the idea. I called Warren and told him I wanted to talk to him at the request of the President. He was planning this trip to Scandinavia--vacation trip. So I met with him and told him that the President wanted to nominate him as solicitor general. He said he would think it over and let me know. We arranged a code message that he could send me from shipboard.

I received the message later--either from shipboard or from Scandinavia, I've forgotten which--saying that he accepted. So he went back to California and he was going to arrange to resign and be solicitor general. It was right at that time that Chief Justice Vinson died.

Fry: So, do I understand you correctly that, then, this solicitor generalship was to be an interim job until a vacancy occurred on the Supreme Court?

Brownell: That's correct.

Fry: What did you hear, or maybe even have consultations about, regarding the appointment of Warren as senator to take Nixon's seat after Nixon became vice president?

Brownell: I never was in on any meetings about that, no.

Fry: It probably was a California movement, and it may have been limited to the state boundary, but I thought it might have come up too with Eisenhower and perhaps with you.

Brownell: Not with me.

Fry: All right.

That brings us up, then, to when Vinson died, and you may have noticed that Sherman Adams says, in his interview in the Eisenhower Library, that you were the one who began to list names of who could be appointed, and that Warren emerged between you and the president-elect. By "president-elect," then, Adams must have meant the earlier November meeting, before Eisenhower took office?

Brownell: I don't think Adams knew about that.

Fry: When Vinson died, you were put in charge of selecting a successor?

Brownell: Yes.

Fry: Maybe you can just tell us how Warren's name emerged.

Brownell: There were a number of names considered. On the court, we considered Harold Burton, who was the only member of the court who had been an active Republican before he was appointed; and Robert Jackson, whom I was favorable toward. Then, off the court, there was Arthur T. Vanderbilt [Chief Justice of New Jersey Supreme Court], and Orie L. Phillips [of Colorado federal circuit court], and who is the other federal judge who had been nominated for the Supreme Court by Hoover and rejected by the Senate?

Fry: Judge John Parker?

Brownell: John Parker, yes. Those were the names that I remember being considered in my talks with Eisenhower. I have read various

Brownell: accounts that the place was offered to [Secretary of State] John Foster Dulles. But to my knowledge, it was not. I mean, as far as I know, it was not. I'd really be surprised if that were so and the president didn't mention it to me. Conceivably it could have happened, but I very much doubt it. Then, I've read other accounts that [Governor] Tom Dewey was seriously considered, but that was not so. His name was mentioned, but it wasn't among the "semi-final candidates," you might say. And Warren, of course.

Fry: Would it have been beyond the pale for someone like Dulles or Dewey to just let you know that they were interested?

Brownell: That they were interested? I don't think they would have, no.

Fry: They would not have taken the initiative?

Brownell: I don't think so. No.

Fry: Did you mention [Supreme Court Justice] John W. Davis as a possibility?

Brownell: No.

Fry: Somewhere I got his name as one of the people that might have been a possibility. I think this was from a newspaper.

Brownell: Yes, well, that sounds like a newspaper story. Any prominent--yes. But his name never entered into our discussion.

Fry: Who, if anybody, was asked before Warren was asked?

Brownell: No one.

Fry: What about yourself? There were rumors also out in the press that you were being considered too.

Brownell: No, it never came up in my discussions with the President.

Fry: Were you interested?

Brownell: No. As far as I know, there was certainly no discussion of it. It might have been in the paper; it's normal for the papers, every time there's a vacancy on the Supreme Court, to name the attorney general and the solicitor general and the two or three leading governors and people of that type. But that doesn't

Brownell: mean a thing. So it might have been on that kind of a list.

Fry: A "Ten Most Important People" list.

Brownell: Yes. So then, the most serious discussion first was the question of appointing someone from the court itself, indicating I'm sure that if someone from the court had been appointed, that would automatically have opened the way for Governor Warren to be nominated as associate justice.

But as the discussions went along, it was decided that there was no one on the court that the President wanted to appoint.

Fry: Why not Jackson?

Brownell: The reason for not Jackson was--two, mainly. One was that he was in a bitter public enmity position with Hugo Black that would have created a great deal of dissension on the court and re-opened the wounds. The other was that he had been the person who argued in favor of the court packing plan for FDR [Roosevelt], and that was a little hard for Eisenhower to swallow. So that eliminated them both. And the other members of the court were not, as far as I know, considered by President Eisenhower for appointment.

Fry: It had to be a Republican too, didn't it?

Brownell: No, no. Jackson was not a Republican. The only so-called "Republican" member (and that's a very crude way to put it) was Harold Burton.

Fry: Had Burton been a crony of Truman?

Brownell: He was appointed by Truman.

Fry: And was he considered as a crony?

Brownell: No. He had served in the Senate with him, from Ohio, but he had been the liberal Republican mayor of Cleveland and a very distinguished member of the United States Senate. He and Truman were friends--associates--but not cronies; he wasn't in the poker group.

Fry: Was his association with Truman the reason he wasn't considered?

Brownell: No. He was beginning to have signs of Parkinson's Disease, which later developed quite seriously for him.

Fry: There was a flurry of people flying back and forth to Washington at that time. Like [Senator William F.] Knowland flew in right from China or somewhere, interrupting his trip.

Brownell: I read that account, but I have no recollection of it or no knowledge of it. If he did mention it to the President directly, I don't know.

Fry: What do you think of that account that appeared, I think, about August, in The Nation magazine, that said "Knowland's pressure for Earl Warren's appointment was effective partly because his support was needed for the truce in Korea."

Brownell: Perfectly cockeyed.

Fry: Do you know anything about [Senator Thomas] Kuchel's role?

Brownell: No. I doubt if he had any. He certainly didn't have an important one.

Fry: A couple of the Republican officials have said it's customary to at least consult with one of the senators from the state when you make an appointment. I wondered if that was the accepted thing for him to do.

Brownell: That is usually only after the President has made up his mind, and I'm quite sure that that was the case here, that 'til the President made up his mind, they didn't have any FBI investigation, or any consultation with the senators.

Fry: We mustn't forget, too, the conjecture that we read that Nixon wanted Warren to be appointed in order to get him out of California politics.*

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*See Pittenger, Richard M. Interview, June 28, 1967, Eisenhower Library. Mr. Pittenger was Vice President of Farmers Insurance Group and a press man at the 1952 convention.

Brownell: I don't take any stock in that. I doubt very much if Nixon entered into any discussion of the filling of the Vinson vacancy. I just don't think that--I don't mean to say there wasn't the usual Potomac fever gossip about the vacancy and who's going to be appointed and all this and that. People may have made statements in the press. But I was talking about serious discussion with Eisenhower about it. I don't believe that any of the California people had serious discussions with the President about it before he made up his mind, before I went to California.

Fry: Had there been any serious discussions with California people in the preceding year and a half? That was after Eisenhower became president. I'm just wondering--

Brownell: I don't think so.

Fry: --who might have been working on Warren's behalf in Washington.

Brownell: Certainly nobody knew about the arrangement that Eisenhower had with Warren, that he would be appointed to the next vacancy. I don't think that was known to any Californians.

Fry: But a lot of Californians thought it would be great if it would happen.

Brownell: Oh, yes. And there was constant speculation.

Fry: I think it's in McIntyre Faries' manuscript, where he makes an allusion to some of Warren's friends in Washington working on his behalf.

Brownell: There were constant speculations about [Thomas E.] Dewey and Warren both because they were governors of the two biggest states, they'd been candidates for president, and they were not in the public - there was just constant speculation as to what their relationship with the Eisenhower administration was going to be. One columnist would write it one way and another one would write it this way. But that's what I mean by Washington gossip. Those were not thoughtful pieces that reflected anything that Eisenhower was doing or thinking about.

Fry: That brings up one more little point: somebody had said, too, that Dewey turned it down--

Brownell: That wasn't so.

Fry: --because he wanted to go into--that he wanted to remain in private practice.

Brownell: No, he was still governor at that time [until 1954].

Fry: Was that before he thought he wanted to retire from the governorship?

Brownell: Yes. He was governor the first two years of Eisenhower's administration.

Fry: There are two or three other people here whose roles are very fuzzy in the records. I'm wondering what General Lucius Clay had to do with this. He had something to do with this, and I think that if one takes several days and looks in Box 22 of the "principal files" in the Eisenhower Library they might find something. I didn't have time to check through that, and I thought maybe you could give us some leads.

Brownell: He was friendly with Warren, and I wouldn't be surprised if during the campaign he talked to Warren about being part of the Eisenhower administration. I think he undoubtedly talked to him about coming into the Eisenhower administration, and I would imagine he mentioned the Supreme Court as a possibility.

Fry: May I put that with another piece of the jigsaw? Could Lucius Clay have been a person who offered this to Warren very early? It might make sense of this other story from Ralph Cake that says one reason Eisenhower went ahead and appointed Warren, even though he might not agree with Warren's philosophy, was that one of Eisenhower's top men had already promised it to him and Ike felt he should live up to that promise?*

Brownell: I don't think so. It doesn't make sense to me. I can well imagine Clay talking to Warren about it or a cabinet position, ambassadorship, or anything of that sort. But, in the first place, he wasn't authorized. Nobody was authorized to offer any position by Eisenhower before the election. I'd bet my bottom dollar on that. Any report that an aide offered it to Warren would just not be accurate, in my opinion.

Fry: If he did offer it, it was unauthorized?

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*Cake, Ralph, National Republican Committeeman from Oregon, in an interview for the Eisenhower Library, July 22, 1969.

Brownell: Right.

Fry: What about Milton Eisenhower? Did he have quite a lot to do with this appointment?

Brownell: I wouldn't be surprised if the President talked to him because he talked to him about everything. He was very close to him at this period of the presidency, as he was later. But I never got any repercussions of their talks.

Fry: One thing we don't have is anything on a friendship--a personal relationship--between Milton Eisenhower and Earl Warren.

Brownell: I don't know of any prior relationship. Do you know, Ann?

Sloane: No, and I don't see how it could have been, in the light of their very different careers.

Fry: I need to ask you a California question. During this period, when Warren was about to be appointed Jesse Steinhart was a man who frequently helped influence the selection of candidates as well as appointees. I wondered if he also was either consulted or if he volunteered any statements on behalf of Warren?

Brownell: Not to my knowledge. That doesn't mean he didn't volunteer some. I don't know of any.

Fry: In Eisenhower's book, he mentions that there was a list of qualifications for the justice that he drew up. Do you know what he was talking about, what these criteria were?

Brownell: I think that that developed after the Warren appointment. The Warren appointment, you see, was his first one of importance. Were there some before? [to Ann]

Sloane: What about the criteria you were developing for the selection of federal judges?

Brownell: I was just trying to think whether that was before or after.

Sloane: I think you had at least several of them [criteria] very clearly in mind, including recent legal experience, because that was the reason for asking Warren to be solicitor general. I think you had at least several of them in mind, such as whether he had had legal experience.

Brownell: Yes. I think we were marking it out at that time and were using this as the guinea pig situation, so to speak. We did develop them, needed them. It could have been that early; you're right about that, Ann, because I remember Senator Taft came in with a nomination for his circuit court in his home state, and that's when we developed the age qualification.

Sloane: That was early.

Brownell: That was quite early. So I guess you're right.

Fry: What was the age qualification?

Brownell: Sixty-two, I think, for one who had no previous judicial experience.

Fry: Where is this list?

Brownell: Just in my head. I don't think Eisenhower ever published it, did he?

Fry: Well, it's mentioned in his autobiography. [Mandate for Change, page 227.]

Brownell: And they were only guidelines, of course.

Fry: What else would have been important?

Brownell: Well, age, health, character, clean life, and of course a good mind, good judicial temperament, and legal attainment. In the case of the Supreme Court, there was also a geographical guideline. Other things being equal, it's better to have all the different sections of the country represented on the court just to maintain the confidence of people in the court.

Fry: So that was in Warren's favor too?

Brownell: Yes. Of course, Justice Douglas came from the West Coast technically.

Fry: Did Eisenhower mention to you that he wanted a pro-integration Chief Justice?

Brownell: No.

Fry: Was there any thought of not having a Southern judge? Someone had said that Eisenhower didn't want a justice from the South, and they thought it was because of civil rights issues.

Brownell: No, that isn't correct. He would have liked to, in many ways, have appointed John Parker, who was from the South, but he was pretty old at that time, as was Orie Phillips.

THE OFFER OF THE CHIEF JUSTICESHIP TO WARREN

Fry: Now, is there anything else you want to add about things considered in the selection of Warren?

Brownell: Then, of course, the time came when Eisenhower decided not to appoint anybody from the court itself. This raised the question as to whether Warren would consider that the talk he'd had the previous November with Eisenhower that the first vacancy on the Supreme Court meant the first vacancy, regardless of whether it was associate justice or chief justice. And the President was undecided about that. He wanted to know Warren's views on it, and also as to whether Warren was generally sympathetic with the ideology, you might say, of the Eisenhower administration. So he asked me to go out to California and get the answer to those two questions, which I did. I guess you have the account of that.

Fry: No, no, I don't. All I have is that you landed and talked for--how long?--an hour and a half, and then you took off again. As you know, most of the accounts in the press about that are that you had a large argument over whether Warren should be an associate justice or chief justice. Warren held out for chief justice and you were trying to convince him to take an associate justiceship.

Brownell: That is not accurate. There was no argument at any time. It was a meeting of two old friends to discuss the questions that Eisenhower had asked on how he felt about it. I think Eisenhower felt that Warren might have some reluctance to move into the chief justiceship without having had any previous judicial experience, as shown by the solicitor general incident that we just talked about. He wanted to know what Warren's views were on that, as to whether he had any reluctance, how he would feel

Brownell: about it; and also whether he generally supported Eisenhower's presidency. Those were the two serious things that we discussed, outside of personal conversation.

Warren took the position that he was ready to accept the chief justiceship that was offered to him by the President, that he did feel that he had a commitment for the next vacancy, and that this was the next vacancy; and that he had followed Eisenhower's presidency and was in agreement with his policies and his program.

The only other thing I discussed with him was what he felt about the proper role between the chief justice and the executive branch, including the Department of Justice. I tried to sound him out on what he thought was the proper role there. We discussed that at some length and were in agreement on that. His thoughts and mine were that there had to be discussion of all administrative problems involving the courts. The chairman of the administrative conference of judges looked to the Department of Justice for recommendations on legislation affecting the judiciary, and that that type of thing was not only proper but necessary.

I discussed with him that I thought there was a great need for a chief justice who would concentrate on the administrative problems of the court system, and that I knew the President felt that he was one of the best administrators in the country and would fill that role very well. I'd say those are the subjects that we covered in a very informal and friendly fashion.

When I left, I left telling him I would report as completely as I could to the President everything that we had talked about, and he would let him know. There was no commitment at that time. I think he left not knowing what the President was going to do; I know I left not knowing what the President was going to do, and went back to Washington and gave a full account to the President of what was said. On the basis of that, the President decided to appoint him.

Then the question came up as to how and when it should be announced. The court had adjourned the previous spring with two or three very important questions on a four-to-four vote, so they'd carried them over 'til the new session, which was to open shortly.

Brownell: The President had been urged by some of the members of the court (I know specifically by Justice Frankfurter) to get the appointment as soon as possible. The question came up as to whether it was legally all right for the new chief justice to sit before he'd been confirmed by the Senate, and we gave an opinion to the President that that was proper. So that more or less decided the question of timing. I recommended to the President that he do that, and that the chief justice sit from the beginning of the new session.

That meant we didn't have much time. I also told the President that, under those circumstances, the decision having been made, the quicker he did it, the better. I told him I thought it would be a good idea to have an off-the-record meeting with some newspaper people and tell them that the President was thinking along these lines and get a story printed to show that this was what the President was thinking of doing.

Fry: To see what reaction he'd get?

Brownell: To see what reaction we'd get. So, we had the meeting. And he authorized me to do that.

Fry: Was this your idea or his?

Brownell: I think it was mine. [pause] I think so. We met out at my house, and about a half a dozen reporters. I told them that this was what the President was thinking about, and perhaps I was a little too definite--because I knew at that time the President was going to appoint him. I didn't say it in so many words, I'm sure, but I certainly got that impression across. So the stories came out the next day that he was <u>going</u> to be appointed. The President was a little surprised but not shocked, and I think when he actually did announce the appointment he said, "This may not come as a shock to some of you," [laughing] or something like that. I confessed to him that I must have gone a little too far in expressing what he was going to do.

Fry: Was there any point of real doubt at McClellan Field in your mind that--if Warren had agreed that, yes, he did follow Eisenhower's policies and these other things--if he'd passed those tests, that Eisenhower would appoint him?

Brownell: I think he had the inside track at that time, but I had no commitment from the President that he was going to. It could have gone either way.

Fry: Who would it have been, then?

Brownell: Well, since we knew--since I knew, at least--that there wasn't going to be anybody from the court, it would have meant that he would have appointed an outside person and run the risk that Warren would have thought he had broken his word to him.

Fry: Any particular outside person?

Brownell: I don't know who it would have been, no. There was never any jelling of opinion on anyone else as an alternative to Warren.

Fry: The other thing I'd like to have more definition on is what the considerations were on the relationship between the Department of Justice and the Supreme Court. Have I missed something about the issues of that time?

Brownell: There was no particular issue. I was a little sensitive, perhaps, on that subject, because when I went down to Washington I had this problem of the selection of a solicitor general. Before inauguration, I went to Chief Justice Vinson and said that I'd understood in the past that the members of the court had expressed views on various people for solicitor general, since that was the representative of the Department of Justice who presented cases in the Supreme Court. If that were the case, I wanted to give him the opportunity to pass along to me any comments that the members of the Supreme Court had on the type of person or various candidates, as far as that went, for solicitor general.

He received me very graciously. The next day in the papers, some columnist wrote up that the new attorney general didn't seem to know his way around Washington very much. He'd gone to call on the Chief Justice and asked his advice as to a solicitor general, and didn't he know that there was such a thing as separation of powers and that was an improper question to ask. [Laughing]

So maybe I was a little touchy on that subject, but I needed to know because I had been in office then six months or so, and I felt there was a lack of communication on some

Brownell: matters affecting the judiciary, and that there should be a close contact between the Department of Justice and the court. There was a period when the administrative office of the court was not as strong as it later became under Warren. They appointed Warren Olney [III], you'll remember, as head. And Warren, in the first few months that he was Chief Justice, recognized the same thing. There were several--I remember when I made my first report to the Judicial Conference as attorney general, I was attacked by one of the southern judges who said I should keep my nose out (or words to that effect) of matters affecting the judiciary. So I was genuinely puzzled as to just what were the proper things to discuss with the court and the Chief Justice. It was in that spirit that we had the discussion between Warren and myself, and not with respect to any particular issue or piece of legislation that was being discussed then.

Sloane: Had you expressed this view to the President, that you needed to know this about a candidate for Chief Justice?

Brownell: I don't think so. I think that was my own.

Sloane: The other two issues were the President's, and this was yours.

Brownell: That's right.

Fry: So what were the details of the discussion about the relationship of the Supreme Court to the White House?

Brownell: It really was to the Department of Justice more than to the White House. No, we didn't discuss the relationship between the President and the Chief Justice.

Fry: Did you say you talked about Congress? (Which is interesting to think about now, since the Warren court was criticized so by some legislators.)

Brownell: No, only about legislation affecting the judiciary and legal reform generally.

Sloane: The Department of Justice would present for the White House the legislation bills which they would want passed--

Fry: --And which the Supreme Court would want, for instance, when they were trying to get some reform in judicial processes and administration.

Brownell: That's right--new judges, additional judges, pensions for judges, salaries for judges, eliminating a backlog in the courts--all those things which occupied a lot of our time.

Fry: And for which Warren Olney went over to the Supreme Court.

INVESTIGATION OF EARL WARREN AND HIS VIEWS

Fry: At this time, Warren Olney was already your assistant?

Brownell: Yes. He was assistant in charge of the criminal division. And of course, he had been one of Warren's assistants when Warren was either attorney general of California or special prosecutor; I don't know whether they made a distinction about that or not. He'd worked very closely with Warren and knew all of his methods as a prosecutor in great detail, and we discussed that in great detail. I went over all of Warren's opinions as attorney general of California, and I went over his record as chairman of the criminal law committee of the American Bar Association, and various speeches that he had made on legal subjects in his public career, so that we had a rather thorough investigation made into any statement that he had made bearing on the courts. [to Ann] You have to go now?

Sloane: Yes. [She leaves.]

Fry: Your last remark brings to mind a general question that's always raised, and that is whether Eisenhower knew what Warren's views were on criminal justice and civil rights and things like that, when he appointed him.

Brownell: He knew his record, in some detail.

Fry: At that time, then, how was his record perceived--liberal, or--

Brownell: No, he was considered a very tough prosecutor. His liberal views, so-called, came really after he went on the court. He had, for example, been in favor of the evacuation of the Japanese from the West Coast, which was anathema to the liberals, and he'd been very severe in his prosecution of crime as a prosecutor and as chairman of the American Bar Association Committee on Criminal Law. So that if anything, I think an

Brownell: examination of his record showed more in the criminal law area than any other area. I don't think he had any record, for example, in anti-trust, and really not much in civil rights, unless you mention this one horrible example of the evacuation of the Japanese.

Fry: He had come out for FEPC* as governor. Was this known?

Brownell: That is true, and I knew that, of course, because I'd been all through it in 1948, and he and Dewey had both favored that. They were attacked by the conservative leaders of the Republican party for that stand. They were ahead of the thinking of the party in that very important area.

I think you could genuinely say he was considered a middle-of-the-roader in the Republican party in the same sense that Eisenhower was.

Fry: So that later, did the Miranda decision, and the others affecting the rights of the accused, come as a shock to Eisenhower, as a surprise?

Brownell: [Pause] So much water went over the dam between the time of his appointment and the Miranda decision that I don't think it would be proper to say it was a shock. By that time, his philosophy was better known, and it was developing; it developed all the time that he was on the court. I doubt very much if he would have been in favor of the Miranda decision when he was first appointed Chief Justice. I think all that philosophy developed after his appointment. In other words, he certainly didn't follow that practice as attorney general of California; or in the prosecution of crime in California, he never followed the practice of giving the witness the so-called Miranda warnings.

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*Fair Employment Practices Commission

WHITE HOUSE RESPONSES TO WARREN COURT DECISIONS

Fry: Do you have anything to say about what Eisenhower actually has said, as he looked back on his appointment of Earl Warren?

Brownell: No, I really don't really have anything to say because I think it depends on--the things that I've seen published were all taken out of context. I know that Eisenhower was very exasperated at the time of the Little Rock thing, and he asked me to look up whether it was true what the southern senators kept telling him, that Andrew Jackson as president said, "The Supreme Court has spoken. Now let them enforce it."

So I prepared a memorandum for him along those lines to show that Jackson did indeed say that, but he didn't [laughing] follow it in practice. There are lots of remarks that presidents make about court decisions which present them with terrible problems of enforcement, so that I'm sure that he, from time to time, was frustrated by the unwillingness of the country to go along with the Brown decision. It left him with these terrible choices like Little Rock, where the last thing he wanted to do was to send in troops; it became necessary in order to uphold the federal constitution, and he didn't hesitate when the time came. But no president would welcome a decision of that kind which left him with insoluble problems of administration and law enforcement.

Fry: Did he ever consider coming out and making a strong public stand backing the Brown decision, or did he feel that this was inappropriate?

Brownell: I think he felt it was inappropriate.

Fry: Did he ever discuss this with you, shortly after the Brown decision? Before Little Rock, I mean.

Brownell: I think I remember discussing with him one time a speech that I was going to make supporting the Brown decision; I just reported that to him. I don't remember any reaction from him on that. I think he felt that if that was the way I felt, that's what I should say. He usually took that position on my speeches. I was usually pretty careful to go over speeches with him that would be interpreted as being an administration point of view. But I don't think that he felt it was his obligation to, by words, to support the Brown decision.

Brownell: I know he was terribly criticized for not doing it, especially in much later years. But at the time, he had to deal with the Southern Manifesto and the public statements of all the Southern senators who really controlled the legislation in the Senate, and the Southern governors, and they took the position that in every legal way they were going to oppose the Brown decision. I think he felt that he was in a better position to act when the time came, as it did come in Little Rock, if he hadn't been exhorting the public one way or the other on it.

I think that that, of course, is the way it worked out and I think in a large measure vindicated his judgment that he was president of all the people and that when he had this terrible split in public opinion, that he should not be an extremist one way or another. But every time it came to upholding federal law, federal constitution, in this area, he did it. That was his way of doing things.

Fry: The other question I have is that about 1956 there was a movement for Warren to step down from the court, after Eisenhower's heart attack, and run for president. I wondered if this was ever seen as a serious threat to Eisenhower's candidacy. This was before the '56 election. [Eisenhower's heart attack was on September 23, 1955.]

Brownell: I never heard of it before, and it certainly was never any threat to his re-election.

Fry: Was Warren ever thought about as a running mate with Eisenhower? I mean in '56.

Brownell: No.

Fry: The only other thing that I didn't ask you was, why did it take three weeks between the time Vinson died and the time Warren was appointed to get this all sorted out and the decision made?

Brownell: That was a very short time.

Fry: That's not a significantly long time?

Brownell: Oh, no. In fact, it might be a significantly short time.

Fry: There was a great deal of investigation that went on, and I guess both Warren Olney and Judge Barnes have mentioned that they took part too in the investigation.

Brownell: Yes. They were the two Californians in my immediate group, and I'm sure I discussed it with them time after time. We had lunch together five times a week.

Fry: Did you have to make a security investigation too?

Brownell: The FBI did, yes. I don't know whether that preceded the nomination or not. The Senate hearings didn't come up for some considerable time afterwards, so I'm not sure whether the FBI check was run on him before or after the announcement of his appointment.

Fry: You were directly involved in the other kind, where you would be interested to know that there was nothing that would be an embarrassment in a senate hearing.

Brownell: Yes. He was about as prominent in public life as anybody in the country. We certainly wouldn't have needed an FBI check on him. I'm sure they had one as a matter of formality, but it may have come later. That's what I'm saying; I don't remember when it came. I imagine it came afterward, because that really was a short time, that three week period; I didn't realize it was that short, really. That was very short.

Fry: This is another question I have from Earl Warren's memoirs: He can't remember for sure who called him finally in Sacramento on, I think, Wednesday, after your plane trip out there Sunday, to tell him that, yes, he had been appointed. He can't remember whether it was you, or whether it was President Eisenhower.

Brownell: I'm sure I called him, but whether Eisenhower also called him, I don't know.

Fry: He only remembers one phone call, but he was probably a little excited [laughing], and he was embarrassed that he can't remember whether he talked to Eisenhower or to you.

Brownell: I think if there was only one call, probably I was the one who made the call. I'm sure I would have done it even if Eisenhower had already called him, because of our relationship.

Fry: Is there anything you want to say about the senate confirmation hearings?

Brownell: No. I didn't participate. I think Bill Rogers, who was the deputy attorney general, who handled those hearings for the Department of Justice, was the one who worked with Governor Warren on them.

Fry: Well, I think we've straightened out a lot of ambiguities in this whole story.

Brownell: It's a story that's never been told; I've never told it before, except to Ann.

Fry: Are you preparing a general memoir with Ann's help?

Brownell: She wants me to, but I haven't made any decisions yet as to whether to or not. But I did tape a lot of reminiscences for her.

Fry: Whenever that's made into your book that you decide on, I hope those tapes will be deposited somewhere.

Brownell: I've agreed to give them all to the Eisenhower Library.

Fry: That's a good place for them; it's where everybody will be going to research.

Brownell: That's where they belong, yes.

Fry: I certainly do thank you.

Brownell: I've enjoyed getting acquainted with you. It's a worthwhile thing to do because it never has been done in any authentic way. I've laughed about a lot of the statements that have been made, but I didn't want to do anything while he was still alive. I will talk to Mrs. Warren about this and tell her what I've done. I suppose you'll send it to me first, and we'll have the understanding that none of it will be given out during my lifetime without your checking with me ahead of time.

Fry: Okay. Fine.

Transcriber: Lee Steinback
Final Typist: Keiko Sugimoto

INDEX -- Herbert Brownell

Adams, Sherman, 50
American Bar Association
  Special Committee to Study Communist Tactics, 35
  Standing Committee on the Federal Judiciary, 36
American Rally, National Executive Committee, 33

Barnes, Stanley N., 42, 54, 74
Barry, Robert R., 55-56
Black, Hugo, 59
Brownell, Herbert
  Eisenhower's nomination and election as president, 12-15
  election campaigns
    1944, 16-18
    1948, 19-20
    1952, 20-24, 42-50
  National Chairman, Republican party, 16-19
  Warren's nomination and confirmation as Chief Justice of Supreme Court, 1-37, 53-71, 74-75
  opinion of Warren's Supreme Court decisions, 71
  other Warren reminiscences, 37-40, 52
Burton, Harold, 6, 57, 59

Cake, Ralph, 49-50, 62
California Bar Association, Board of Governors, 36
cases, U.S. Supreme Court
  Brown, 72
  Miranda, 70-71
Christian Nationalist Crusade, 33
civil law
  Brown case, 72
Clay, Lucius D., 1, 12, 62
communism issue, 34-35
corruption issue, 33-34
Court, United States Supreme Court
  administration duties re, 9, 37-40, 66, 69-70
  decisions
    Brown, 72-73
    Miranda, 70-71
  relations with Justice Department, 26-27, 37-40
  Warren's nomination and confirmation as Chief Justice, 1-37, 53-71
criminal law
  Miranda case, 70-71

Davis, John W., 8, 58
Dewey, Thomas, 58, 61-62
Dulles, John Foster, 6, 58

Eisenhower, Dwight D.
  nomination and election as president, 1952, 12-15, 20-21
  Warren's nomination and confirmation as Chief Justice of Supreme Court, 1-37, 47, 53-71, 74
  opinion of Warren's Supreme Court decisions, 72
Eisenhower, Milton, 63
election campaigns
  1948 presidential, 19-24, 51-52, 71
  1952 presidential, 12-16, 20-21, 42-50
  1956 presidential, 73

Fair Employment Practices Commission, 71
Fair Play Resolution, Republican National Convention, 1952, 42-46

Governors' Conference, 1952, 44

Haight, Raymond, 16, 18

Jackson, Robert, 6, 57, 59
Johnson, Olin, 34
Judicial Conference of the United States, 9, 26-27

Knowland, William F., 6, 19, 45-46, 54-55, 60
Kuchel, Thomas, 35, 60

Langer, William, 30, 33, 36
Langlie, Arthur, 1

McClosky, Burr, 33
McKilden, Theodore R., 43
McLain, George, 33

National Institute of Social Welfare, 33
Nixon, Richard M., 6, 60-61
nonpartisan politics, 8

O'Conor, Herbert R., 35
Olney, Warren III, 69-70, 74

Parker, John, 8, 57, 65
Phillips, Orie L., 8, 57, 65

racial integration
  and U.S. Supreme Court, 64, 72-73
Rankin, J. Lee, 11
Republican party
  national chairmanship, 1944-1948, 16-19
  national conventions
    1944, 16-17
    1952, 20-24, 42-43
  Governors' Conference, 1952, 44
  and Earl Warren, 50-51, 71
Rogers, William P., 32-33, 75

Samish, Arthur, 33
Small, Merrell F., 54
Stassen, Harold, 43
Steinhart, Jesse, 63
Summerfield, Arthur, 50
Swift, Wesley, 33

Vanderbilt, Arthur, 8, 57

Warren, Earl
  election campaigns
    1948, 19, 51-52
    1952, 14-15, 20-24, 43-50
    1956, 73
  nonpartisan politics of, 9
  and Republican party, 17-19, 50-51, 71
  nomination and confirmation as Chieft Justice of Supreme Court, 1-37
    47, 53-71, 73-75
  criticism of, 33-35

Warren, Earl (cont.)
  as Chief Justice, 37-40
    administration of courts, 27, 37-40, 66, 69-70
    decisions, 70-73
    impeachment attempt, 39
    relation with Justice Department, 26-27, 37-40, 68-70
  personality, 52
Wilson, Roderick J., 33

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Regional Oral History Office

Earl Warren Oral History Project

Louis Finkelstein

EARL WARREN'S INQUIRY INTO TALMUDIC LAW

An Interview Conducted by
Amelia Fry

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TABLE OF CONTENTS - Louis Finkelstein

INTERVIEW HISTORY		i
BIOGRAPHICAL SKETCH		ii
I	MEETING THE CHIEF JUSTICE	1
II	INTEREST IN RELATIONSHIP OF ETHICS AND THE LAW	4
III	INTERPRETATIONS OF TALMUDIC LAW IN A CHANGING SOCIETY	7
IV	CONTINUATION OF DISCUSSIONS WITH WARREN	10
INDEX		18

INTERVIEW HISTORY

Interviewer: Amelia R. Fry of the Regional Oral History Office, conducted the interview with Dr. Louis Finkelstein.

Time and Setting of the Interview: The interview was held on October 30, 1975 in Dr. Finkelstein's office at the Jewish Theological Seminary of America, New York.

The Interview: It was Milton Krentz (of the William E. Wiener Oral History Library and the Department of Radio and Television of the Jewish Theological Seminary) who first mentioned to us that Chancellor Finkelstein had been the one to whom Chief Justice Earl Warren had come for discussions on comparative philosophies of justice and law, especially Talmudic law. It was also Mr. Krentz who, three or four years later, arranged an appointment with Dr. Finkelstein for this office to tape his recollections of his meetings with Earl Warren.

Dr. Finkelstein answered the questions quietly and in the rapid flow of words that spring from an active mind. He searched his memory of his conversations with Warren, and while a detail here and there may have evaporated over the intervening years, he managed to record the major evidence for the main story: Earl Warren's on-going study of Talmudic law.

Warren had chosen his teacher well. Dr. Finkelstein is historian, scholar, orthodox Jew, and the author of the definitive history of the Jews. At the time of the interview he appeared almost ascetic. His study was lined with shelves, books, manuscripts, and stacks of papers. As he cleared one end of a long table where we could talk, he mentioned that Earl Warren had also met with a professor of law at Harvard from time to time, but the name eluded the Rabbi at the moment. As the interview got underway, his gentleness and patience defined his presence as much as his words did.

Later, on November 26, 1976, a roughly emended transcript was sent to him for his review. He made a few corrections and returned it shortly for final typing. In the meantime he sent photographs of Earl Warren from his files and copies of one of the lectures the Chief Justice had heard, "Amos vs. Amaziah," by Professor Shalom Spiegel. These are included in The Bancroft Library copy of the interview and a few others.

Amelia R. Fry
Interviewer-Editor

6 June 1977
Regional Oral History Office
486 The Bancroft Library
University of California at Berkeley

LOUIS FINKELSTEIN

Biographical Sketch

As of 1974

Doctor Louis Finkelstein, Chancellor Emeritus of The Jewish Theological Seminary of America, was appointed to the post of Chancellor and President of the Faculties in the reorganization of the Seminary Administration which took place in October, 1951. He continues to serve as Solomon Schechter Professor of Theology on the faculty of the Seminary's Rabbinical School.

Doctor Finkelstein, who is regarded as one of the outstanding religious leaders and scholars on the American scene today, was born in Cincinnati, Ohio, on June 14, 1895. He is the son of Rabbi Simon J. and Hannah Brager Finkelstein. He received his A.B. from The City College of New York in 1915; his Ph.D. from Columbia University in 1918; and was ordained as Rabbi at The Jewish Theological Seminary of America in 1919. He holds the following honorary degrees: S.T.D., Columbia University (44); Litt.D., Boston University (50); L.H.D., Dropsie College (61), Hebrew Union College-Jewish Institute of Religion (68); LL.D., Temple University (63), Fordham University (66), Southeastern Massachusetts Technological Institute (66), and Manhattan College (65); D.D., Yale University (68); D.S.T., New York University (67); D.H.L., Woodstock College (72), Brandeis University (72).

Doctor Finkelstein served as Rabbi of Congregation Kehilath Israel, New York City, from 1919-1931. He was appointed instructor in Talmud at the Seminary in 1920, serving in that post for four years. From 1924 to 1930 he was Solomon Schechter Lecturer in Theology, Associate Professor of Theology in 1930 and Professor of Theology since 1931. He became Assistant to the President in 1934, Provost in 1937, fourth President of the Seminary in 1940 and Chancellor in 1950, and returned as Chancellor in 1972.

The author and editor of many scholarly works, Doctor Finkelstein edited a two-volume work, The Jews: Their History, Culture and Religion. A third revised edition of this work was published in 1960. He is also the editor of Social Responsibility in an Age of Revolution. Among his published works are: Jewish Self-Government in the Middle Ages (1924); The Pharisees, Their Origin and Their Philosophy (1925); Akiba - Scholar, Saint, Martyr (1936); The Pharisees, The Sociological Background of Their Faith (1938; revised edition, 1963); Beliefs and Practices of Judaism (1941); Premaccabean Documents in The Passover Haggadah (1943); Sifra on Torat Kohanim According to Codex Assemani LXVI (1956); New Light from the Prophets (1969); Pharisaism in the Making (1972). He is co-author of: Religions of Democracy (1941) and Faith for Today (1941). Among the works of which he is editor are: Kimchi's Commentary on Isaiah (1926); Sifre on Deuteronomy (1935) and(1936); Saadia Gaon and Abot of Rabbi Nathan (1950); Social Responsibility in an Age of Revolution (1972). He is co-editor of Science, Philosphy and Religion Annual Symposia (since 1942). In addition, he is a contributor to such publications as the Jewish Quarterly Review, Journal of Biblical Literature, Harvard Theological Review, Menorah Journal, New Palestine, Hebrew Union College Annual, Thomist and Revue des Etudes Juives.

In 1963, Doctor Finkelstein was appointed, by President John F. Kennedy, a member of the five-man delegation to the Coronation of Pope Paul VI. He received the Phi Epsilon Pi National Service Award in 1952. In 1943-1944, Doctor Finkelstein was Ingersoll Lecturer on the immortality of man, Harvard University. In 1972, City University of New York awarded Doctor Finkelstein its 125th Anniversary Medal. He had received its Townsend Harris Medal in 1940. In that same year, he was appointed by the late President Franklin D. Roosevelt to succeed Doctor Cyrus Adler as representative of Judaism to advise the President with regard to steps for world peace.

Among the organizations with which he is affiliated are: Rabbinical Assembly of America (of which he was president from 1928-30); United Synagogue of America; American Academy of Jewish Research (fellow and member of the executive committee); Jewish Academy of Arts and Sciences (fellow); American Academy of Arts and Sciences (fellow); American Friends of Hebrew University (member, Board of Directors); Conference on Science Philososophy and Religion (president); The Institute for Religious and Social Studies (Director); American Jewish Committee (member, Executive Committee); Institute for Advancement of Cultural and Spiritual Values, etc. (member, Advisory Board); American Honorary Committee Israeli Hazamir (member); National Committee Jewish Book Council of America (member); Universal Jewish Encyclopedia (vice-president and member, Editorial Board); American Oriental Society (member); Jewish Teachers College Fund (trustee); Institute on Post-War Reconstruction, New York University (member, Board of Consultants); National Book Committee (member, National Board); and a founder of the American Israel Society. He is an alumnus member of Phi Beta Kappa and served in 1954 as an honorary vice-chairman of the American Jewish Tercentenary.

Doctor Finkelstein was married to Carmel Bentwich, March 5, 1922. He has three children, Hadassah Nita (Mrs. Philip J. Davis), Rabbi Ezra Michael and Faith (Mrs. H. Jacob Katzenstein) and nine grandchildren.

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Date of Interview: October 30, 1975

I MEETING THE CHIEF JUSTICE

Fry: Could we begin by finding out how your life came in touch with Chief Justice Warren's?

LF: Well, quite aside from our meetings here in New York and in Washington, perhaps the most interesting for you would be the occasion when he was chairman of the delegation appointed by President Kennedy to represent the United States at the coronation of Pope Paul VI.

Fry: Oh, you were on that with him, weren't you?

LF: Yes. I was one of the members of that group. We spent some time together. It was of course an interesting occasion. He had to leave early; he had to leave on the day-before-the-last, after the coronation and before the final reception for the delegates by the Pope, because he had to give the lecture in Athens. But he was there for most of the time.

On one occasion I asked him to travel with me to Jerusalem to deliver a lecture at what we call the Schocken Institute, which the seminary conducts in Jerusalem.

Fry: Was this on the same trip?

LF: No, a different trip. On a different occasion. And he agreed to do that. But when I informed the state of Israel that he was coming, because he was, I imagine, the highest official of the United States who had come to Israel until that time, he was made a guest of the state. He delivered his lecture and also lectured at the Hebrew University and then he traveled around the country. His lectures on both occasions were popular, frank, and directed

LF: to the analysis of the kind of thinking that has to go into decision making in our time. He avoided any reference to decisions he had made, and I think that when he was asked about one of the decisions, the 1954 desegregation decision, he said that he could not discuss it. During my last conversation with him, or one of my last conversations with him, I asked him which decision he considered the most important one that he had made. He thought it was the one on the reapportionment.

Fry: The one man-one vote--

LF: One man-one vote. I asked him if he thought the court might sometime reverse some of the decisions that had been rendered by the Warren Court. He thought that that was most unlikely. Certainly it would be unlikely that they could change the reapportionment one or the desegregation one. However, they might weaken some of the decisions that had been rendered in defense of--to protect--

Fry: The rights of the accused?

LF: That's right. He felt that they might be whittled away.

Fry: Is that right? So he foresaw the future rather clearly.

LF: He felt that they might be whittled away in part but that they could not be undone altogether.

Fry: That's interesting. About when were you talking with him about that?

LF: When did he retire from the court?

Fry: '69.

LF: Well this would have been about '71.

Fry: Could I go back and get some idea of how you first met him? I have one of these pictures here that shows you with him in 1959.

LF: I have many pictures with him, yes.

Fry: [reading from back of picture] "The University of Judaism, 1951 commencement exercise."

LF: Well, he was given an honorary degree by us on that occasion. And that's how I first met him. The University of Judaism is the west coast branch of this seminary, and we asked him to receive an honorary degree from us there. It was the first honorary degree we conferred there. He was then the governor of California, and he was gracious enough to accept.

Fry: Why was he chosen then? This was before his great liberal record on the Supreme Court.

LF: Oh, he was a great governor of California. I suppose you know it was because of him that Southern California can live at all. He built that 2,000 mile pipeline to bring water there all the way from Oregon.* So, he was a great governor, and after all, he had been nominated, he had been re-elected by both parties. So, we were very much impressed by him, and we asked him to accept an honorary degree from us, and he was good enough to say that he would. After the ceremonies about five hundred people came over to ask for his autograph, and he signed one after another. As this was going on, half an hour passed, forty minutes passed, so I said, "Governor, perhaps this is tiring you. Would you like me to stop it? I can stop it." "Oh," he said, "no no, this is my bread and butter."

Fry: That was when he was considering seriously running for president.

LF: So he continued doing this until he finished the job. I'm trying to remember the exact date when he came to spend the weekend here.

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* Governor Earl Warren guided the post-war development of the federally-funded Central Valley Project and laid the early legislative and administrative framework for the California Water Project, which began in 1960 with passage of a bond measure. Both projects took water from northern California to the agricultural lands and the cities of the central and southern areas of the state. --ed.

II INTEREST IN RELATIONSHIP OF ETHICS AND LAW

LF: He and I often discussed the ethics of the Talmud, which is the great Jewish commentary on the Bible containing discussion of most of its laws. He was very impressed with that. And he said that he would like to spend a little time with us here. I said, well, if he came here for a weekend, I would arrange to have our professor of Talmud, who is the greatest living authority on the subject, lecture on Friday night. And I'd ask another professor to lecture on Saturday at lunch.

He agreed to do that, and he came and spent the weekend here. On Friday evening our Talmud professor, Professor Saul Lieberman, discussed the passage in the Talmud which forbids acceptance of any confession in any way in a criminal case. This is the only system of law of ancient or medieval times which did prohibit it. Elsewhere throughout the ancient world not only was self-incrimination permitted, but sometimes people were tortured to confess. The Talmudic rejection of self-incrimination became part of English law through the Puritans of the seventeenth century who studied rabbinical works and introduced the idea into the Bill of Rights. Our professor did not go into that. He only discussed what the Talmud had to say about self-incrimination.

Fry: Was Warren on the court at this time?

LF: Yes. He was Chief Justice.* The Talmud also has a rule against double jeopardy. A person who's been tried once cannot be tried a second time.

It had been agreed that the Chief Justice would not be asked to speak. But after the lecture the Chief Justice said to me, "I think I would like to say a few words." And what he said was, "This lecture has been so interesting, so instructive, that I can't understand how it is nobody knows about it, that this is kept almost as a secret among you specialists in the field." The following day, the New York Times had somehow got word that he was here, and they published a front page article saying that the Chief Justice was studying the Talmud at the seminary.

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*13 September 1957.

Fry: Oh, this was in the papers then.

LF: It was in the paper. Ex-President Truman happened to be in New York visiting Judge Rosenman; and when he saw that, he said, "If it is good enough for him, it is good enough for me. Let's go over there."

And so, as we were seated down to lunch, a student came over and said to me, "President Truman is outside and he's asking for you." I replied, "So is the Pope." [Laughter]

Fry: You thought it was some student prank! [Laughter]

LF: He said, "No no, President Truman is really there, and Judge Rosenman." He came in. One of our Bible professors, Professor Shalom Spiegel, gave a lecture on Amos versus Amaziah, a story in the Bible. (We have printed that; I'll give it to you.)* Well, the Chief Justice told me that this was one of the most interesting weekends that he had ever had, and he said that he would like to come back again sometime. But I didn't want to trouble him. Afterwards, when I would have troubled him, he was not strong enough. He had suffered a heart attack.

He spoke at a number of our dinners. We have annual dinners here which used to bring together leaders of all religious groups here. On two occasions, I think, he spoke here. He also spoke at a similar meeting we had in Florida. The last time I heard him speak was when he was at the University of Judaism. I came out there because he was there.

Now I think that about sums up what I can remember offhand. (I'll get you a copy of that. If I can't get it now I'll mail it to you.)

Fry: Fine, then we can put that in as a sort of appendix. Did you have any further correspondence with the Chief Justice? I wonder if he undertook to study the Talmud on his own and correspond with you.

LF: We gave him a copy of the English translation of the Talmud, called the Soncino translation--the whole Talmud--and I saw it in his office, but he once said to me, "I don't spend too much time on it," as indeed he couldn't, being a very busy man. Studying the Talmud is like studying higher mathematics.

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*Copy available in The Bancroft Library. Or see series, Essays in Judaism, No. 31, "Amos vs. Amaziah," by Shalom Spiegel, The Jewish Theological Seminary of America.

Fry: It's not something that you can do only on Friday nights. Then his chief interest in it was its relation to our Bill of Rights, do you think? Do I understand you right?

LF: No. I think he became interested because of this great concern of the relationship of ethics to law. And, curiously enough, in the Talmud we have a situation very similar to what you have here in this country. That is to say, the five books of Moses are an immutable constitution. They are the law. But of course they go back thirty-five hundred years. If you want to carry out the commandments under different conditions, you have to do a good deal of interpreting. So that the role of the Jewish rabbi over the centuries has been in some respects similar to the role of the judge in the court in trying to interpret a written document so as to make it fit the needs of life, and how would the author of the document approach a situation which is entirely novel.

III INTERPRETATIONS OF TALMUDIC LAW IN A CHANGING SOCIETY

Fry: In your discussions with him early, before he came here for lectures, is this the sort of thing that you two talked about?

LF: That's right. That's the sort of thing that we talked about. I hadn't mentioned self-incrimination and double jeopardy to him because it simply hadn't come up. But I often talked to him about the method by which we in America have to deal with the Jewish marriage law which is in the Bible in an entirely different world--or family law, or even commercial law. As for instance, the Bible prohibits taking any interest on a loan. Absolutely prohibits it completely.

Fry: That's a consumer-oriented view, isn't it? [Laughter]

LF: Well, in an agricultural, a rural country, you go to your friend or neighbor to borrow some money, and it would be outrageous for him to demand any kind of interest. However, that would create an impossible situation in New York. If a person had capital, he couldn't invest it. It would be all right in one respect: [with levity] he couldn't buy municipal bonds and he couldn't lose his money.* [Laughter] But he'd be very badly off in other respects.

Well, over the centuries rabbis have interpreted and reinterpreted this law so as to make it feasible for a person to lend money and to deal in money, borrow money at a reasonable interest under certain conditions and special circumstances. That is considered permitted and compatible with the Biblical law, although the Biblical law looked at plainly says no.

Fry: I can see now the parallel between Warren's interpretation--

LF: When he heard that, he was fascinated by it. In the Bible for instance, in Jewish law, divorce is not what it is in common law. That is to say, there is no suing for divorce. Divorce can only

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*referring to the current crises in New York City, in which the city was faced with imminent bankruptcy.

LF: be by consent of both parties. On the other hand, sometimes a woman is married to an impossible person, and the rabbis interpret it that in certain conditions an authoritative rabbinic court can compel a husband to divorce his wife. But certain conditions have to be fulfilled: such as, if he suffers from a loathsome illness. If a wife wants to be divorced under such circumstances, you can compel the husband to divorce her. Well, that's not in the Bible. That's a rabbinic interpretation of the Bible.

Fry: At the present day, when a rabbi is confronted with something like this, in which he has to make an alteration of traditional--

LF: Not an alteration, it's an interpretation. We mustn't make alterations.

Fry: Pardon me. [Laughter] All right. When he has to make an interpretation of the original law, is there something in Jewish scholarship which is equivalent to the body of precedent that the Chief Justice would go to?

LF: Oh, sure, cases like this have been coming down for three thousand years. The whole Talmud is a body of precedents, and based on the Talmud there are more precedents, and rabbi after rabbi has published books about decisions that he made under difficult situations. For instance, in the German concentration camps many men were killed. Sometimes a wife escaped and didn't know whether her husband was alive or dead. A woman can't remarry unless her husband has died or she has been divorced, but of course in the concentration camps there wasn't divorce and she didn't know whether he'd died, and there she was left in this impossible state of remaining forever single. Many rabbis, well everyone did as much searching as he could to discover whether a man died or not, but then they worked out a theory by which if a man had been in a concentration camp for five years and had not been heard of, the assumption was that he was dead; but this was done in individual cases, each time after a very careful search to make sure that there was no evidence that he was alive. Well, that could not have been foreseen five thousand years ago.

Fry: Do you think that Warren saw any difference between the sanctity of Moses' laws, and the Constitution here in the United States which was drawn up--by a committee? [Laughter]

LF: Well, I don't know. The parallel exists. Of course, we think the Bible is a divine law and the Constitution is a human law. But the attitude is about the same. The Constitution can be amended and the Bible can't be amended, so even though rabbis could not change a word of the Bible, the problem does remain that

LF: you have fixed, very brief words, and yet you have living phenomena, which are always changing, and the business of the judge is to render a decision which is loyal to tradition and based on precedent, not breaking precedent--he's not a legislator--and on the other hand, taking into account situations as they are and trying to see what does the law really mean under these circumstances.

Fry: This is interesting.

IV CONTINUATION OF DISCUSSIONS WITH WARREN

Fry: Let me try to tie something together with what we have come up with in our interviews about Warren before 1953 and interviews with Warren himself. One indication that I know about, of Earl Warren being personally and socially involved with a leader of the Jewish community, was his association with Ben Swig which began, I think, after he got on the Supreme Court. And Ben Swig in San Francisco told me that he had never read the Talmud, [laughing] so he was no source of inspiration to Earl Warren about the Talmud.

LF: Oh, you did discuss this with Ben Swig? So you knew about this?

Fry: Yes. I had heard the rumor about it, but no one could tell me what Warren had really done. So I was wondering, when he went to Los Angeles for his honorary degree, was there discussion that early on this sort of thing? I'm trying to place it in time.

LF. I saw him there only briefly, but I met him; and then when he came east to the court, I saw him more frequently. Because I used to go to Washington very often in those days.

Fry: Oh, and you would visit him there?

LF: Yes.

Fry: Did you continue your discussion on the Talmud there?

LF: Yes.

Fry: All right. So far I had only understood that it was primarily those lectures that were set up here.

LF: No no. We often sat around and discussed these questions. He liked to do that.

Fry: About how often?

LF: Well, I would say that I used to come to Washington about three times a year.

Fry: And this would be at those lunches in his chambers?

LF: Always lunch, and lasting an hour or so after lunch.

Fry: And would he question you--

LF: He would question me, or I would make some comments. But very often he questioned me. It was very fascinating. He was a profound man. Of course he was popular, and didn't put on any airs. One often was deceived into thinking that he was simple. He wasn't simple. He was a very profound gentleman. A very profound thinker. He told me once about his--didn't he begin life as a district attorney?

Fry: His public career began as an assistant district attorney; yes, that's true.

LF: And it was then that he became interested in the rights of the accused, because he saw that firsthand, and saw how important it was to protect the accused.

Fry: What about his attitudes towards minorities? Did you pick up on that any?

LF: Well, that was so obvious that there was nothing to pick up.

Fry: You mean after the Brown decision.*

LF: After the Brown decision. Most of my conversations with him were after that Brown decision.

Fry: Did he discuss that at all with you?

LF: We never discussed a decision. He never discussed a case under consideration. And of course I never asked him.

Fry: Well, it's interesting that you found that this man did have a--what did you say--a profound mind, because we do get testimony that he was simplistic.

LF: He gave the impression of being simplistic.

Fry: But that was because he had distilled things--?

LF: That was because he wanted to give that impression. He was direct and didn't like letting technicalities interfere with justice.

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*Brown v. Board of Education, 1954.

LF: So I think sometimes, without showing it, he was impatient with some appeals on a technicality. But, on the other hand, he was a man of deep understanding and saw through a good deal that he didn't talk about, in public, and which I don't think I'm free to talk about here either.

Fry: Oh I wish you would, and put it under seal for ten years.

LF: --but I'm not free. Some of the comments he made about various people I think had better stay--. My impression was, he led a busy life, and may not have read many books--I don't know how many books he read--but he certainly was a person who had a profound grasp of the situations in which we live and a determination to deal with them. And these decisions that he helped make and his skill, which I'm sure you heard about, in getting people to agree, getting the unanimous decision, was a great skill, great administrative skill, reflected genius. This is not everyday power.

Fry: Did you see one of his major concerns that of relating a code of morality to the administration of justice?

LF: That's right. Plus some decisions in which he was involved on which he and I could not possibly agree. I never told him this, by the way, never told him this, but I thought and I still think that the court has gone much too far in taking the position that the first amendment prohibits any kind of religious expression, expression of religious feeling, in the schools. I don't think that reading a psalm before class opens is establishing a religion. And I couldn't understand how the judges could reconcile their rejection with the fact that every court session opens with "God save this court." Well, that sounds to me like a prayer. [Laughter] And why it's permitted in the Supreme Court of the United States and every other court in the country but not permitted in the public schools, I just don't know.*

Fry: It surprises me that you would say that because I had always thought that when, for instance, the celebration of Christmas is made such a big deal in public schools, and when Bible reading was allowed in public schools, that it was the Jewish kids who came off short.

LF: Well, Christmas is one thing--celebration of a holiday, a religious festival in school--is one thing. It was done when I was in school, and I don't think it made any difference to me. But I

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*Reference here is to Engel v. Vitale.

LF: can see where Jews would object to it, and I think rightly so. That is the "establishment of a religion."* However, the Bible's a great literary document which everyone ought to know. Take Samuel; everybody ought to know the book of Samuel. And the ignorance of the American people of the Bible is simply frightful. So I don't know why this should be prohibited. I also don't know why it should be prohibited to say that God exists, when it's permitted to say that God doesn't exist. You are allowed to say in school, that is to say in publicly-supported colleges, that God doesn't exist, but you can never say that God does exist. I can't understand this. But I never discussed this with him or with any other judge.

Fry: Did you discuss the principle of separation of church and state at all with him?

LF: No. I knew that we disagreed on this so I thought that this was something that we better not discuss.

Fry: You were in close contact with the Jewish community in Los Angeles, and I wonder if you could give any indication of their feeling toward Earl Warren as governor and support for him politically. Would you be in a position to have perceived anything there?

LF: I know that he was very popular. He received an honorary degree, as I said, and five hundred people wanted his signature. The place was crowded. That was a big day for them. He was very popular in all parts of California, with all people.

Fry: I know he was. In that 1950 campaign, I think most of Jimmy Roosevelt's money (he was opposing Warren for governor) came from the Jewish community in Los Angeles. So maybe contributions went to Jimmy Roosevelt and the votes went to Earl Warren. Who knows.

LF: There was a man by the name of Jesse Steinhart. Have you run across his name?

Fry: Oh, of course. What do you know about his relationship to Warren? He died before we could interview him.

LF: He was a great friend of Warren's.

Fry: In San Francisco.

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*U.S. Constitution, First Amendment.

LF: In San Francisco, and helped him very greatly in his early campaigns for district attorney and for governor. The Chief Justice told me that when he was district attorney he often discussed some of his cases with Jesse Steinhart, who was a very clever man. He was also Ben Swig's lawyer.

Fry: Yes, and very much a public-spirited man, as I understand.

LF: Oh yes, a great man.

Fry: He had always had one person in his law firm take part in civic activities at the expense of the law firm.

LF: I knew Jesse Steinhart very well. He has children--family--there.

Fry: Yes, I talked to his son. It would be helpful to have from you an assessment of Jesse Steinhart's position within the religious outlook of the Jews--

LF: Jesse Steinhart was not an observant Jew, in the sense that all of us out here in the Seminary are. However, when I first came to San Francisco in 1938, on my first trip to the West, I wrote him I was coming because he was the only man in San Francisco whom I had met. And I said, "I'd like to see you."

Well, he was the soul of generosity. He asked me what I wanted to do in San Francisco, and I said, "Well, I would like to meet with clergymen of the city and also the students at the Pacific School of Religion." And he arranged both meetings.

Fry: I wonder if he and Earl Warren ever talked about Jewish law.

LF: I don't think Jesse Steinhart knew anything about it. I don't think he knew more than Warren.

Fry: So then, I guess this interest really began when he first began discussing it with you? That's what it sounds like.

LF: I'm afraid so. I'm afraid his interest in the subject first began when he came here and he had the opportunity--I began quite innocently, as I always would begin, like the ancient mariner and his tale. If I have a chance to talk about Jewish law, I'll talk about Jewish law [laughter] if anybody's going to listen. And since he was a chief justice and interested in some aspects of it, I began talking about it, especially since he was interested, and sometimes made some very illuminating comments. As for instance, when our professor said that in Jewish law

LF: self-incrimination is forbidden to the extent that if a man has confessed to a crime he can't be punished, no matter what evidence you have against him. And Warren said, "Well, we can't live under such a system. That's not practical for us. It might have been practical in Palestine thirty-five hundred years ago in a simple society. Here it would be totally impractical."

Fry: Did you say a while ago that double jeopardy was not allowed either?

LF: That's right. The court decided that if a man were innocent, no matter what evidence turned up afterwards, he could not be tried again. Also, if in the discussions among the judges, if one day a judge said, "I think the man is innocent," he couldn't change his mind the next day and say he was guilty. But he could do it the other way. The whole system of law was then directed to the protection of the accused, on the assumption that it was much better that ninety-nine guilty people go free than that one innocent person should suffer. And [with emphasis] I think that was Earl Warren's philosophy. That was the whole issue. The view is precisely the opposite of Stalin's, who held that it was much better that ninety-nine people who are innocent would be punished, than one person who was guilty would escape.

[phone rings] Well, I guess I have to answer that. [tape off momentarily]

Fry: Was there any parallel along the lines of right to privacy? In other words--in Talmudic law--

LF: Offhand I wouldn't be able to answer that. I'd have to think about it.

Fry: I just wondered if that was another thing that would have been discussed.

LF: I just don't know; I'd have to think about it.

Fry: Do you have any other enlightening anecdotes about your association with Earl Warren which might just give us a handle on his character as a man?

LF: [long pause] No, I don't think I have, offhand. As I told you, some of the things he mentioned to me I don't think I ought to repeat, even off the record.

Fry: All right.

LF: I did ask his advice on a number of matters which were a little complicated for me--and he helped me very greatly. I was Chancellor here.

Fry: Would these have to do with your--

LF: They had to do with my work here. He was a very able administrator in very complex situations, infinitely more complex than anything I had to do, and so I often asked his advice. And he always gave it, after thinking a while, because I didn't come to him with easy questions. I came to him with the hard ones. But I must say that he was very helpful, and I was very much impressed with the fact that he was helpful.

Fry: --as one administrator to the other. Do you know if he was close to President Kennedy, in a personal sense?

LF: I asked him how I came to be on that commission to go to the Pope's coronation, and he said to me that he didn't know, but that President Kennedy had called him and told him that he planned to ask me and whether he had any objections, because Warren was chairman. Warren said, "No, it is perfectly all right." I don't know how I came to be on that commission. I suspect that it was Arthur Goldberg who recommended me, but I'm not sure.

Fry: Some people say that he was extremely close to the Kennedys, and I didn't know for sure.

LF: Probably, I shouldn't be surprised one bit. But I have no way of knowing.

Fry: Did you have any indication of Eisenhower's position with respect to Warren?

LF: Well, Eisenhower was surely disappointed in him. I think that that decision about desegregation upset Eisenhower because it created a situation with which he had to deal, and in a very difficult way--sending soldiers into Mississippi , or was it Arkansas?

Fry: I think it was Arkansas.

LF: Little Rock. So, I don't think Eisenhower enjoyed that very much, and he probably thought--I never heard Mr. Warren say that, but I've heard other people say that Eisenhower thought that

LF: the worst mistake he made in his presidency was his appointment of the Chief Justice. You probably heard that too.

Fry: I've heard it second-hand, like this, from a number of people, but haven't been able to get it first-hand.

LF: Well, how could you get it first-hand? But I know that their relationship cooled very considerably.

Fry: Well, I certainly do thank you--

LF: Thank you.

[End of Interview]

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INDEX - Louis Finkelstein

Brown v. Board of Education, 2, 11, 16

Eisenhower, Dwight, 16
Engle v. Vitale, 12

Goldberg, Arthur, 16

Jewish law. See Talmud.
Jews, 10, 12, 13

Kennedy, John, 16

Lieberman, Saul, 4
Los Angeles, California, 13

race relations, 11
religion, and the constitution, 12, 13
Roosevelt, James, 13
Rosenman, Samuel, 5

Spiegel, Shalom, 5
Stalin, Joseph, 15
Steinhart, Jesse, 13, 14
Swig, Ben, 10, 14

Talmud (Talmudic Law), and Warren, 4-7, 9, 10, 14, 15
Truman, Harry, 5

University of Judaism, 2-3

Warren, Earl, 1 and passim. See also Talmud.

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Earl Warren Oral History Project

James C. Hagerty

EARL WARREN'S APPOINTMENT TO THE SUPREME COURT

An Interview Conducted by
Amelia Fry

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TABLE OF CONTENTS - James C. Hagerty

INTERVIEW HISTORY		i
I	WARREN'S APPOINTMENT TO THE SUPREME COURT	1
II	THE 1952 REPUBLICAN CONVENTION	12
III	THE 1948 PRESIDENTIAL CAMPAIGN	19
INDEX		24

INTERVIEW HISTORY

When one considers the political milieu of Earl Warren's appointment to the United States Supreme Court, the person who was liaison between President Eisenhower and the press looms as one of the more obvious choices as a source of information. James C. Hagerty was not only in that sensitive position, but was also a member of the General's staff during the Republican Convention in Chicago in 1952. From the latter vantage point he was aware of the movements within California's Earl Warren delegation and now confirms the swing of that group from steadfastly Warren to mostly Eisenhower. He also attests to the importance of the pre-convention credentials fight between rival delegations from Texas in which the vote of the large Warren delegation played a decisive role in seating the pro-Eisenhower delegations and thereby gave the General a majority on the first ballot. In addition, Mr. Hagerty was press representative during the convention and campaign of 1948 in which Earl Warren was Thomas E. Dewey's running mate.

Although he is a heavily-scheduled vice president of the American Broadcasting Company, Mr. Hagerty agreed to set aside an hour of his time for the interview Monday, November 5, 1973 in his spacious office that seems suspended in the skyline of New York. Even though the city's mayoralty election and scattered state elections were the next day, the taping was mercifully free of interruptions. We began at 11:00 and ran overtime into his lunch hour --a reality that he graciously dismissed.

Because of the time limitations, there was no opportunity to work with him on an outline beforehand, so we taped a conversation structured partly by the interviewer's somewhat arbitrary questions. However, Mr. Hagerty knew the stories about the Supreme Court appointment that would be of interest and launched into the subject with the easy finesse of one who has daily faced questions from the firing line of the White House press corps.

On the transcript Mr. Hagerty added corrections and filled in some of the blank spaces where audibility had been a problem on the tape. The efficiency of this seasoned newsman provided an all-too-rare bonus in the usual finishing process of an oral history manuscript.

Amelia R. Fry
Interviewer-Editor

8 February 1974
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I WARREN'S APPOINTMENT TO THE SUPREME COURT

Fry: I hope you can remember the events around Earl Warren's appointment to the Supreme Court.

Hagerty: Well, you know, memory is a rather treacherous thing at times. But the part of the story that I do remember, because it was rather obvious--at least to the people in the White House that knew something about this--was when Herb Brownell as the Attorney General finally went to Sacramento and called upon the Governor at his office in the state capitol and then returned to Washington.

At the time--I remember this quite vividly--all of us, or at least I did in the press office--thought that there would be stories from Sacramento on the fact that the Attorney General had called on the Governor and that the Supreme Court and probably appointment as Chief Justice was what they were talking about. But again, as I remember, there were no stories to that effect at that time from Sacramento.

When the Attorney General got back to Washington, it's my recollection that he talked to some reporters that he knew who covered not only the Justice Department but were covering the administration. In effect, as a result of that conversation he had with some reporters, the stories came out of Washington that the governor, Earl Warren, was in line for appointment to the Court and probably the top job.

Until, however, the President acted, I as press secretary had "no comment" on all of the stories that were floating around. But it was still a wonder to me and to some others, and I think to Herb Brownell, that when he went to the Governor's office as the Attorney General,

Hagerty: flying all the way out to Sacramento, California to see him, that there wasn't at least speculative stories coming out of California at that time.

Fry: The Sacramento Bee does carry the stories of Brownell and of their meeting at the airport and talking for three hours. But it didn't make any announcement about an appointment.

Hagerty: No, but I'm talking about--and again, I can't remember dates from the top of my head--I'm talking about the day that Mr. Brownell called upon the Governor in his office in the state capitol at Sacramento. That was just after he met him at the airport and met him several other places. I'm talking about the day when the Attorney General went out to California, to Sacramento and visited the Governor in his office.

Fry: Maybe we've missed a trip. We only know of one trip that Brownell made, and then the appointment was announced about four days later, I believe.

Hagerty: It is my recollection--and again, without having a chance to look at my own notes, which happen to be out in Abilene [at the Eisenhower Library], I wouldn't know, and I don't even know if it's in my notes--but I recollected that Mr. Brownell was in California and Mr. Brownell did call upon the then-Governor at his office in Sacramento.

Fry: Whether it was at his office or at the airport, I did want to ask you about this particular method of releasing the story that Brownell had been out there and had talked to Governor Warren about the court appointment. This story, according to Leo Katcher,* was released by Brownell after he got back to the airport at Washington, before Eisenhower had made any announcement of it--

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*Author of Earl Warren, A Political Biography.

Hagerty: Whether it happened at the airport in Washington or at his office, I don't know.

Fry: But the interesting thing is that Leo Katcher viewed this as a "leak" to favorite newspapers in Washington. (He must have at the time been on a newspaper that didn't get leaked to, maybe?) And so I wondered why there was that delay between Brownell's announcement to some of the newspapers and then four days later, on Thursday, Eisenhower's press conference announcing the appointment.

Hagerty: There's many times a delay in the decision to nominate and the announcement of the actual thing; I don't think there's anything unusual about it. Again, my recollection is that some of us in the administration sitting back in Washington thought it was there for all to see when the Attorney General came out to California! He wasn't going to talk to the Governor about a minor job or a minor position. As sometimes happens, maybe some of those out there were too close to the story and didn't want to write the wrong story. But it was always a fascinating thing to us back in Washington at that time that there weren't more stories about what the Attorney General was doing seeing the Governor in California. That's the only point I'm making.

It was then quite obvious that Brownell did talk to some reporter friends and the stories then started to develop along those lines. Again, I don't know what happened to the reporters in California. They could have been too close; perhaps there were too many rumors floating around and they didn't want to go out on a limb.

They couldn't get it directly from the Governor, which was quite obvious, and they couldn't get it from Brownell who was in and out and they couldn't stop him and say, "What are you doing here?" But it was at the time somewhat amusing and somewhat of a non-understanding of the energies and abilities of the California press corps that they didn't add two and two together and get four.

Fry: There is also, in the literature, a great deal of speculation about when Warren was first offered

Fry: an associate justiceship, and whether he held out for the chief justiceship.

Hagerty: I couldn't say a thing about that; I really couldn't. Again, my memory is a little bit rusty. For example, there was some question for Ike, I believe, on court vacancies for Foster Dulles and for Governor Dewey. At the time, they were working actively with General Eisenhower. But as far as I was concerned, there was no doubt in my mind, and I don't think in anybody's mind who took an active interest in the campaign or in General Eisenhower, that John Foster Dulles was going to be the next Secretary of State.

Governor Dewey was normally considered as a very strong Eisenhower supporter. But right from the start, Dewey made it quite clear that while he was supporting General Eisenhower and while his people around the country were supporting General Eisenhower, that he was not really interested in the federal job. He was governor of the state of New York and he had been a Republican candidate twice and had been defeated twice and was practical enough to realize that it would be better for him, and for the new incoming President, if he remained governor of the state of New York. This I know for sure.

Fry: But I still don't understand why Dewey wouldn't have wanted the Supreme Court appointment. Superficially, it looks so logical for him.

Hagerty: No, he was not looking toward the Supreme Court in that position. But I would suspect--and I knew him, I had worked with him very closely--he really was committed to New York, so committed that he wanted to stay where he was and work with the incoming President in the biggest state. Now it's California, but right then New York was the largest state. He really didn't have an ambition in that direction.

If John Foster Dulles hadn't been around there, he might have considered and liked maybe to have been Secretary of State. But John Foster Dulles had that pretty much wrapped up right from the start.

Hagerty: Actually, as I recall it, at the Commodore Hotel, which was Mr. Eisenhower's headquarters after the election, John Foster Dulles was the first cabinet designate member that Eisenhower announced. Also, John Foster Dulles recommended that when his designation was approved by the President-elect, I also announced that, at Mr. Dulles' recommendation, approved by the President, he would undergo a full FBI field investigation before he accepted the nomination.

As a result of John Foster Dulles having so talked with the President-elect Eisenhower, each designate member of the cabinet had to go through a full federal FBI investigation, which usually took about two and a half to three weeks.

But there was no doubt in my mind, or in any of the news media's minds that I can recall at that time, or the President's, that John Foster Dulles was going to be his Secretary of State. So he wasn't considered there for the Court.

And Governor Dewey really--I cannot recall any even mild suggestion that he would be on the Supreme Court; he wanted to stay as governor and contribute as governor of the state to the welfare of the new administration at that time.

Fry: One of the big questions about the Warren appointment is why was Warren chosen. Time magazine wrote at the time that Eisenhower had very little political debt to Earl Warren. Is it true that Warren kind of entered Eisenhower's campaign late and only after a great deal of persuading?

Hagerty: You have to know Eisenhower. I don't think it was ever a question of political debt. I think it was a question of getting the best man possible for any given job. Earl Warren was not only a distinguished governor; he was a distinguished American citizen. When the decision was made, it was the President's approval of Earl Warren, but political debts didn't have much to do with it.

While the convention itself was a hard, tough fight between the Eisenhower forces and the Taft forces, both sides as a result of that moved fast to heal breaches. I can remember the day of the nomination. Quite a few of us were in the Black-

Hagerty: stone Hotel in the General's suite. When he was nominated, and had votes that would nominate him, he got up and excused himself and went into the other room to talk to Mrs. Eisenhower, who was in the other room alone, and then came out with his hat. People said, "Where are you going?" He said, "I'm going across and see Bob Taft." He said to me, "Come on, Jim." I was the only one of his staff who went over with him. He wasn't going to go over with an entourage.

He went down from the Blackstone Hotel. The Taft headquarters were in the Hilton, right across the street, and he went over and saw Bob Taft. That was the very first move to solidify the Republican party.

Then Bob Taft met him at Morningside, as you remember, sometime after that, which his opponents called the Surrender at Morningside, when he and Bob Taft got together. But, unlike other presidential campaigns since then, his move with Senator Taft unified the party and he went on to win.

When people at that time said that Mr. Eisenhower had no political training, I think he was a politician in the best sense of the word. They had forgotten (this was in the convention I'm talking about) that he was not only supreme commander of Allied Forces Europe, but also supreme commander of NATO and was used to dealing with the heads of states of the European countries and was used to working with all people; he knew how to do it. It was his initiative that unified the party and unified it pretty fast right after the convention.

Fry: I was interested, too, that you said he wanted to get "the best man" that he could for the Court. Do you know what he was looking for in a Chief Justice at that time, what to him was the "best man?"

Hagerty: That would be hard for me to say. He was looking for a man, like anyone would, of great integrity, a man who to a certain extent reflected his viewpoints as well, although he never said that anybody should be a carbon copy; and a man who, if appointed and nominated to the bench, would be looked upon as a valuable addition to the Supreme

Hagerty: Court. Certainly at the time, and since then, Earl Warren emerged as one of the great Chief Justices of our country. And so I would think Mr. Eisenhower's judgment on that was pretty darned good.

Fry: Was Eisenhower happy with this appointment later? There are reports that he was quite disappointed in Warren's performance on the Court.

Hagerty: I heard that too. Sure, there may have been a few times when he didn't wholly agree with the decisions of the Warren court. But Mr. Eisenhower was a constitutionalist, and when the court ruled, that was the law of the land and he accepted it and did his best to uphold federally the decisions of the Supreme Court. You don't have to agree with an individual on every single thing to admire him and like him and think he was a fine Chief Justice.

Fry: At the time that he was appointed, I wonder if you know whether there was any discussion between him and Brownell of the upcoming cases, particularly Brown vs. Board of Education.

Hagerty: I would have no knowledge of that. No, I don't know.

Fry: You know what I'm referring to? Because later some southern congressmen accused Brownell of checking with him on his school integration views before the appointment.

Hagerty: Yes. No, I would have no knowledge of that, even in my memory. That was something entirely out of my field. If it happened--I don't know whether it did or not--I would have no knowledge of it.

Fry: Another thing that we need to get down as straight on the record as possible is the relative merit of some of these theories of why he was appointed.

Hagerty: The only thing I add it up to, then and now, was that the President and the Attorney General thought that Earl Warren would be a valuable addition to the Supreme Court and that he was a man of great

Hagerty: integrity who would be a fine Chief Justice and member of the Court. I think it was as simple as that.

Fry: Do you think that Warren was first offered an Associate Justiceship and then held out for the chief?

Hagerty: I have no knowledge of that. That would be something, again, that I wouldn't know; I really wasn't in on all those details. While I knew of Brownell going out there, my job was different; my job was to announce things when they happened.

Fry: So we need to talk to Mr. Brownell about that.

Hagerty: I would say so.

Fry: Do you know who was consulted about this appointment? I have some record of Senator Bill Knowland, who was then in the Middle East, flying back to Washington to talk to Eisenhower when Vinson died. I assume that he was one of the leading figures in this.

Hagerty: I would assume--and again, now, I'm only talking on assumption, knowing the way Mr. Brownell and Mr. Eisenhower operated--that Bill, as the senior Republican senator from Earl Warren's state, I would assume that they would discuss it with the senator from the state and not leave him in the dark.

Fry: I'd like to talk a minute about Brownell's role in this. Can you kind of give me the context of this? Did Brownell always handle President Eisenhower's major appointments?

Hagerty: No. I think it is perfectly fair, however, to say that in his field, which he was then in as Attorney General, a discussion with the President-elect or the President on the Chief Justice was perfectly normal and natural. Again, you have to know Herb; you have to know the President. Sure, he was, during the convention and before that and during the campaign, he was the campaign manager. During the convention, he was the major man who was

Hagerty: working on getting delegates, with the help of a lot of people--Henry Cabot Lodge, the governors, and people like that.

During the campaign, he was the campaign manager. But once he became Attorney General, he was Attorney General. While probably some other appointments or some other cabinet officers may have been discussed with him, once he was Attorney General, the appointment of a Supreme Court Justice really fell quite naturally within his province as Attorney General. He could talk with the President; the President could talk with him on those matters.

On other appointments, Mr. Eisenhower probably talked to other people. But the Chief Justice or an Associate Justice quite properly fell within a discussion period between the President and the Attorney General, and not as political campaign manager; he was speaking as Attorney General with the President.

Fry: When I was at the Eisenhower Library trying to find whatever I could about this, there was a lot of correspondence with Lucius Clay on just about everything, between Eisenhower and Lucius Clay. One person said that Clay also had a big role in this appointment. Could you give me any enlightenment about this?

Hagerty: No, I couldn't on that, but Lucius Clay did take a large role in the advance campaign. He played a very large role in getting people lined up in advance supporting the President prior to the convention and during the convention. As a matter of fact, Lucius Clay came to Albany when I was press secretary for Governor Dewey and saw Governor Dewey. Then Governor Dewey asked me to come into the meeting with them, and he bore a message from then General Eisenhower in Paris that if he was coming back and going to retire from the army and run for the nomination, would I come down and help brief him on the domestic questions that he would be getting when he started meeting the press.

I can speak just factually that Lucius Clay was the way that I got in to the direct Eisenhower staff--a request from General Eisenhower through

Hagerty: Lucius Clay to Governor Dewey to me. And of course, I said I'd be delighted. This happened in many other instances with General Clay. He was a personal friend of General Eisenhower, and he did a lot during the pre-convention period and the convention period in getting people to work in support of the Eisenhower campaign, both at the convention and afterwards in the campaign itself.

I recollect also that he was quite active in the citizen volunteers for Eisenhower during the campaign. He was a very integral part of both the pre-convention, the convention, and the campaign period, very much so.

Fry: And was he also an informal friend and consultant?

Hagerty: Yes.

Fry: Would that be a good question to pursue with Mr. Brownell?

Hagerty: Yes. But also, again, Lucius did not enter the government; he stayed in his company, his firm. But he was an old-time friend of General Eisenhower as General Clay, the same as many other people who served in the military with Eisenhower.

Fry: Were you aware of these other positions that were offered to Earl Warren?

Hagerty: No.

Fry: Warren says that he had accepted the Solicitor Generalship.

Hagerty: I wouldn't know that.

Fry: You mentioned about the other cabinet officers getting a complete FBI field check. I suppose that means that Warren also got a complete check.

Hagerty: Oh yes.

Fry: There is a span of time--like about three weeks--that the position on the bench was vacant.

Hagerty: That's right. This was part and parcel of the way

Hagerty: President Eisenhower went about seeking his people. As I say, it really started with John Foster Dulles, who urged that the President-elect Eisenhower give him a full field investigation, and it applied to everybody else. In those days, also, a full field FBI investigation meant something. It was, without doubt, much more thorough then.

II THE 1952 REPUBLICAN CONVENTION

Fry: I'd like to probe your memory about the importance of the California delegation at the convention in relationship to Eisenhower's candidacy.

Hagerty: Well, here again, this is memory.

Fry: As you know, it was an independent delegation pledged to Governor Warren for the first ballot.

Hagerty: But it was also finally divided into three sections, as I recall it. You've got to go back. The 1952 convention was really as hard and as tough a delegate fight for the nomination for presidency as we've had for some time in our country, between two honorable and distinguished men, Dwight Eisenhower and Robert Taft.

It really started in the primaries. It got out of hand as far as the Taft forces were concerned at Mineral Wells in Texas. The convention itself was almost two conventions.

The week before the convention actually started was the meeting of the Credentials Committee, and the whole question of Mineral Wells and some other contested delegations were fought out in that week ahead. Then we went into the convention.

Now, in our own figures at the time, we didn't think that the Taft forces had more than five hundred delegates, and as a matter of fact it turned out that our hunches were about right. But that wasn't true from the Taft people's point of view, and that certainly wasn't true from the newsmen and everybody covering it; it was a really close race.

As I recall it, the California delegation almost broke down and had three leaders really.

Hagerty: The Governor, Dick Nixon, and Senator Knowland, each of which together probably controlled about a third; it was one-third, one-third, one-third.

Earl Warren as governor kept the delegation pretty much as a favorite son delegation for some time. But the convention never got past the first ballot.

And Mr. Nixon finally, before the convention and I can't remember exactly what day it was or what week it was--it looked like we were going to get a third of the California delegation there. And then later, it also looked like we were going to get some of Knowland's people that he controlled, and then some of Governor Warren's people that he controlled. But we didn't want to have an out-and-out fight with the Governor himself for many reasons. But finally, before the roll-call, everything came around pretty much on Eisenhower's side.

It was also brought about to some extent in the credentials fight, the biggest fight, and the one probably--with all due respects to Bob Taft and his managers--that hurt him as much as anything was the Mineral Wells, the Texas situation. Taft finally said, "We'll split it half and half," which was a great moral victory for the Eisenhower forces, and we said, "Nothing doing. We want a roll-call and we're going to insist on a roll-call."

All of this time, California was still sitting as a favorite son state. But then, after the credentials fight and as the convention started, it was pretty obvious that the Taft people had been hurt and it also looked pretty obvious that California was shifting away from a favorite son, with Earl Warren, and more in the Eisenhower camp than the Taft camp.

But it was very close; it was very close right up to the first ballot. As a matter of fact, if my memory is correct, Warren Berger was the one to switch in the final votes for Minnesota to put them over the necessary majority. It was as close as that. And California, to use an old athletic expression, got off the dime, before that time.

Fry: What we miss in your story is who were the leaders of the Eisenhower people in the California delegation and of the Taft group?

Hagerty: I can't remember their names now.

Fry: Bill Knowland was one of the leaders; was he a Taft man?

Hagerty: Yes, he was a Taft man; yes, he was a Taft man, but it is also fair to say he was a senator, and Bob Taft was the leader of the Senate. And until the very end, the senators were reluctant to vote against, or to come out too far against the Republican leader of the Senate.

Fry: As opposed to the head of the army or a state governor.

Hagerty: Yes. And the governor of the state could still keep the delegation in a favorite son position until--not the end, but until--this is all from memory now--nearly the end of the first roll-call. But it was close.

Fry: And California's voting for the Eisenhower delegation in Texas? How important was that?

Hagerty: Very important; very important. As I say, there were two conventions. There was the credentials convention and then the regular convention. It was actually--I would guess the nomination became a fact as a result of the credentials convention prior to the regular convention, and California's delegation was split--not solid.

Fry: Was Nixon the one doing the most active campaigning for the seating of the Eisenhower delegation?

Hagerty: I think he was very active. Again, I don't know whether he was the most active. I would say he was the most publicly active. It began to look, quite at the start of the convention, that California wasn't going to--particularly if it looked like a first-ballot nomination--that California wasn't going to remain as a favorite son.

Fry: Yes. Was there a point, too, before the voting, where you (the Eisenhower forces) felt that there was no chance of a draw between Taft and Eisenhower, whereby a third candidate like--

Hagerty: We never thought--and when I say "we", that would be Herb Brownell whom I was working for at that time; he was in charge--we never thought that it would go down to the wire. At the very, very most, we thought it might go to a second ballot. But, before the first ballot was taken, we thought we could do it on the first ballot.

Fry: There's another very important question: someone--and I honestly can't tell you where this came from, but I think I picked it up as a rumor in the press--said that Knowland was offered the vice presidency by the Eisenhower forces during the convention.

Hagerty: No, I don't think so.

There was also, in addition to this credentials convention, we also had a governors conference that was about a week before that where even, as I recall, one or two Taft governors voted with the Eisenhower governors against what had happened in Mineral Wells. And--

Fry: Yes, I wonder how he [Warren] voted.

Hagerty: In fact, it's my recollection, and it's only recollection, that he voted with that; you better check that. But it was a large majority. These were the Republican governors, and there was a resolution against Mineral Wells and it passed. It's my recollection that there were only two or three Republican governor votes for the Taft people and what they did at Mineral Wells; all the rest of the governors voted with the Eisenhower people.

Sherman Adams was then the floor leader of the governors down at that governors convention, and it was something like twenty-three to three on a vote, or something like that.

It was too bad that the Taft managers made a point of sticking on Mineral Wells; they made a mistake.

Fry: Did you ever consider Warren seriously as a possible third party to come in and break a deadlock?

Hagerty: No.

Fry: And the story about--

Hagerty: When I say no, I'm reflecting my job as press secretary. But I worked closely with Herb Brownell on delegates; I mean, I didn't work on the delegates but he was keeping me informed. No, he never anticipated a deadlock and a third party candidacy, a third man coming up. We never expected that to happen. After the credentials convention, before we went into the regular convention, and the governors conference with their vote on Mineral Wells and everything else--no, we--the Eisenhower managers with Herb Brownell as the leader--never thought there'd be a deadlock. We thought we had the votes, probably on the first ballot but by all means on the second.

Fry: And did I talk with you about whether, at the convention, there were any direct overtures made to Warren in any way?

Hagerty: If there were, you'd have to get that from other people. I was not in on any. I was pretty damn busy with the newsmen and reporting on our own delegate strength, and statements and things like that.

Fry: The other question is about a number of accounts that seem to indicate that Nixon's vice presidency was foreordained by the time the actual convention got underway.

Hagerty: No , that wasn't true. After the President was nominated, there was a meeting, presided over by Herb Brownell, of the Republican leaders. Mr. Eisenhower had asked Mr. Brownell to hold this meeting to determine the sense of the leaders on who should be the vice presidential nominee. There were many people in the meeting--they were not just Eisenhower people, but Taft people as well. In polling, Nixon ended up ahead, and I forget who the other candidates were; there were one or two other candidates that were there.

Mr. Brownell, who was there, called Mr. Eisenhower--Mr. Eisenhower was at the Blackstone Hotel and the meeting, as I recall it, was across the street up on the Eisenhower headquarters, which was on the tenth or twentieth floor or some place--and said that, as a result of the polling and as

Hagerty: a result of this meeting, that they would recommend Dick Nixon. And Mr. Eisenhower said, "Fine, that will be acceptable."

Fry: Was Nixon's selection at all because of his work with the California delegation?

Hagerty: I suppose some of it was, sure.

Fry: And what do you know about Nixon working with delegates on the train from California, as he brought the delegates to the convention?

Hagerty: Nothing. I've heard it, but nothing. I'm sure he did; that's the way things happen. But it was from that meeting, and Mr. Brownell phoned to Mr. Eisenhower and Mr. Eisenhower said he would accept.

Fry: Do you know anything about the comings and goings of Nixon in relation to Warren's Court appointment?

Hagerty: No, I don't. Again, I would kind of think that this was between the Attorney General and the President of the United States pretty much.

Fry: Knowland must have come back from Cairo, Egypt for something.

Hagerty: Yes, but the final decision to pick Warren was made by Mr. Brownell and the President.

Fry: And they did have other candidates? Someone told me that after Brownell left Sacramento, he flew down to Southern California to see somebody about a couple of other candidates. Do you know anything about that? Frankly, it surprised me. I've only gotten it from one source.

Hagerty: I doubt it. My recollection is that when Brownell went out to Sacramento it was all set. That was why we were so amused--not amused; we were sort of amazed that it didn't happen, that the story didn't break out of Sacramento. I thought they had good political reporters in that state house.

Fry: Yes, they do, and there <u>is</u> speculation in the news stories I've read, but, you know, Warren had a

Fry: pretty good relationship with the newspapers out there.

Hagerty: Squire Behrens kicked himself that he didn't write it. He had a hunch, but Squire didn't write it.

Fry: Later on, Behrens told Leo Katcher that he thought that on the campaign train that Warren had a commitment from Eisenhower for some post, as early as that. He said he "smelled" it; it was his reporter's sense.

Hagerty: If Squire smelled it, he was probably right because he's one of the best reporters I know.

III THE 1948 PRESIDENTIAL CAMPAIGN

Fry: I guess one thing we'd like to have is just your general comments on the nature of that 1948 campaign and how well it was coordinated between the vice presidency and the presidency. In other words, were Warren's speeches Warren's own or the work of a master speech writer? How was that set up?

Hagerty: No. In any campaign, there just isn't any "master speech writer," I don't care who it is. It just doesn't work that way. There was only one thing wrong in the 1948 campaign. That was the combined recommendations of the Republican National Committee that Dewey had it in the bag and to play it safe. And he played it safe. That was the first time that I can remember that he ever played any campaign safe. And he lost it. Yet he was following the unanimous recommendation of everybody.

Fry: Were you on Dewey's campaign?

Hagerty: Yes.

Fry: How was communication set up between the two trains, or was that impossible?

Hagerty: There was communications but not much. Each one had its so-called staff officer representing the other fellow. I have never yet seen any kind of a coordinated campaign between a presidential and a vice-presidential candidate.

Fry: Do you remember the reaction to the point in the Warren campaign route when Warren began to speak out, I think, on the Taft-Hartley bill? What was the reaction of the people?

Hagerty: It was the same thing that Dewey tried once in the campaign, and every single member of the Republican National Committee was called and every single member said to tone it down. Agreement had been to play it safe. The same thing happened on that that happened with Dewey. Warren attacked the Taft-Hartley Act--Erie, Reading, Pennsylvania, or some damn place like that. When he got back, Dewey had Brownell call everyone in the Republican National Committee and everybody said, "It's in the bag, toots. Play it safe." And nobody knew better than Dewey that he made a mistake in following that advice.

Fry: This was such an uncharacteristic type of campaign for Earl Warren to run.

Hagerty: It was an uncharacteristic campaign for both of them, and it just didn't work.

Fry: They were such different persons; how did they get along personally?

Hagerty: I think they got along pretty well personally. I will take off my hat to both of them. I don't recall, after the 1948 debacle, either one of them blaming each other. And afterwards, they both said they took the advice of the combined National Committee to play it safe, and unfortunately it was wrong. But I don't remember any of them saying, either Warren or Dewey criticizing each other. They may have wept a few tears on each other's shoulders, but I don't recall either one of them saying anything unkind about the other.

Fry: I have one other burning question and then you can leave. What made Warren accept the vice presidency in 1948? Nearly everyone in California understood he was not going to take it when he left California for that convention.

Hagerty: Look, the combined leadership of your party, the combined recommendation of your friends, makes a difference.

Fry: Who talked him into it?

Hagerty: I guess everybody--the National Committee, the Dewey people, probably his own people, that this was a ticket that was sure to win. And remember that in our history, a vice president very often succeeds the president in that job. Either by assassination or something, one out of every three or four vice presidents became presidents.

Fry: It's something you never mention, but of course the statistics are there.

Hagerty: You're a heartbeat away from the president, and you have a leg up on the presidency after four or eight years. Also, that this would unite the party and give a balanced ticket with New York and California. I would suspect that all those discussions, arguments and points of view were submitted to the Governor of California.

Fry: I suppose. But during and after the campaign, Californians would say that the only thing wrong with the ticket was that it should have been reversed.

Hagerty: Both of them would have been excellent presidents in my book. But Dewey did really have a strangle hold on the presidency of 1948, particularly when he had run against Mr. Roosevelt in the middle of the war when everybody knew he couldn't win. Again, he did not want to destroy the two-party system. Because of the war, and you had to have someone run against Roosevelt. And it was almost that well planned; you got to let him go in 1948 because he took it in 1944.

The same is true of Governor Warren. Sure, he left California not wanting it, but by the time he got there, and all of these arguments that could be made on it, not only for his own personal sake but for the country, it was a pretty hard thing to say no to. Particularly when you're dealing with a ticket that had it pretty well wrapped up, or so it looked like at the time. It's a pretty difficult thing to turn down. I would suspect that's exactly what happened.

Fry: Were you present any time people went to talk to Warren?

Hagerty: No. You say no on some of those things you don't want to be in, because when you're asked questions by the press, you can be in a tough spot if you know too much. So I stayed out of some meetings. I could just say, "No, I don't know." "No, I wasn't there."

Fry: If somebody else told this story, you couldn't be accused of leaking it.

Hagerty: Not only that, but if my man that I was working for attended and then said that I could say this and this, then I could. But I could also say I wasn't there.

There were many meetings that took place at the White House during the Korean War; there were many times that I did not want to attend the National Security Council or the President did not want me there. But afterwards, he'd tell me what happened. There were other occasions when he'd say, "You'd better come and listen." But if I wasn't there, I could say to anyone asking questions, "I don't know; I wasn't there. I'll try to find out." I couldn't say that if they knew I was sitting there.

The same is true with the link with the press, which I was. There were many times when the President would say, "Don't get yourself in a position of lying." And as I say, after working hours, most of these fellows [reporters] were personal friends of mine and still are--but it's a number of professional, ethical positions that you take, and they know that, and I know the positions that they take.

Fry: I guess a number of newsmen are rather careful to avoid a situation where things are off the record.

Hagerty: During a lot of campaigns, you know, I was on friendly enough terms with the press to get in touch with people around the country and say, "Hey, what's going to happen in California?" You have friends who'll give you pretty good advice; I can get pretty good advice from them. A lot of people would call me in New York, and I'd call a lot of people. Squire [Earl Behrens] was one of them, and he'd never been wrong on Northern Cali-

Hagerty: fornia that I know of. Really.

Fry: He's certainly a knowledgeable person.

Hagerty: Sure. Right now, I would suspect that I have gotten twenty or thirty non-ABC calls from people around the country about what's going to happen in the mayoral election tomorrow around here and what's going to happen in the gubernatorial elections. We sort of swap.

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INDEX

Adams, Sherman, 15
appointments to public office, 1-11, 17-18
Army, U.S., 6, 14
Attorney General, U.S.
  office of, 1-3, 8-9

Behrens, Earl (Squire), 18, 22-23
Berger, Warren, 13
Brown vs. Board of Education, 7
Brownell, Herb, 1-3, 7, 8-9, 10, 15, 16-17, 20

California, political
  importance of, 12-14, 17, 21
campaigns,
  1944, presidential, 21
  1948, presidential, 19-23
  1952, presidential, 4, 5, 6, 8, 9, 10, 18
  general comments, 6, 19, 22-23
civil rights,
  equal rights to education, 7
Clay, Lucius, 9-10
Congress, U.S., 7
conventions, political,
  1952, Republican Party national, 5-6, 8-9, 10, 12-18

Department of Justice, U.S., 1
Dewey, Thomas E., 4, 5, 9, 10, 19, 20, 21
Dulles, John Foster, 4-5, 11

education, 7
Eisenhower, Dwight D., 1, 3, 4, 5, 6-7, 8, 9-10, 11, 12, 13, 14, 15, 16-17, 22
Eisenhower Library, 2, 9
Eisenhower, Mamie, 6
elections,
  1944, presidential, 4, 21
  1948, presidential, 4, 19, 20, 21
  1952, presidential, 5, 6, 12
  1973, New York mayoralty and gubernatorial, 23

Federal Bureau of Investigation, 5, 10, 11

Hagerty, James C., 1, passim

Katcher, Leo, 2-3, 18
Knowland, William, 8, 13, 14, 15
Korean War, 22

Lodge, Henry Cabot, 9

media, 1-3, 5, 9, 12, 16, 17-18, 22-23
military, U.S., 6, 19, 14

National Security Council, 22
Negroes, 7
New York, political importance of, 4, 5, 21
newspapers,
  political role of, 1-3, 17-18
  Sacramento Bee, 2
  See also media
Nixon, Richard M., 13, 14, 16, 17
North Atlantic Treaty Organization (NATO), 6

politics, 1, passim
press secretary,
  functions of, 1, 8, 9, 16, 22-23
public schools, 7

racial attitudes, 7
racial integration, 7
Republican National Committee, 19, 20, 21
Republican Party, 4-6, 8-9, 10, 12-18, 19-23
Roosevelt, Franklin D., 21

Sacramento Bee, 2
Senate, U.S., 8, 14
Supreme Court, U.S.,
  Earl Warren's appointment to, 1-11, 17-18
  Brown vs. Board of Education, 7

Taft, Robert A., 5, 6, 12, 13, 14, 15, 16
Taft-Harley Act, 19-20
Time magazine, 5

United States,
Department of Justice, 1

Vice-Presidency, U.S.,
office of, 21
Vinson, Fred M., 8

Warren, Earl,
1948 campaign, 19-23
1952 convention, 12, 13, 15-16
appointment to Supreme Court, 1-11, 17-18
White House, 1, 22
World War II, 21

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Regional Oral History Office

Earl Warren Oral History Project

William W. Oliver

WORKING IN THE SUPREME COURT: COMMENTS ON COURT, BROWN DECISION, WARREN AND OTHER JUSTICES

An Interview Conducted by
Mortimer Schwartz

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TABLE OF CONTENTS - William Oliver

INTERVIEW HISTORY i

I CLERKING FOR CHIEF JUSTICE WARREN: THE FIRST YEAR 1

Law Clerk, 1953-1954 1

Relationship Between Justice Frankfurter and the Chief Justice 6

Comments on Warren's Leadership 9

The Court and Other Branches of Government 11

The Chief and His Staff 14

The Other Justices 17

II CHIEF JUSTICE FRED VINSON 23

APPENDIX: Correspondence Regarding the Drafting of the Brown v. Topeka Board of Education Decision 31

INDEX 34

INTERVIEW HISTORY

Date of Interview: 17 May 1972

Those Present: William Oliver and Mortimer Schwartz

Place Held: Office of Mortimer Schwartz in School of Law, University of California, Davis

Conduct of Interview: William Oliver was originally Chief Justice Vinson's clerk. Upon Vinson's death he was asked to continue, and so became Earl Warren's first head law clerk in the Supreme Court, 1953-54. At the time of the interview he was visiting Professor of Law at U.C. Davis, an appointment he had especially sought because, as a wine maker attempting to become a commercial vintner, he wanted access to the expertise of the School of Enology and Viticulture at Davis. His permanent appointment is as professor of law at the University of Indiana at Bloomington.

By prior arrangement, the interview was conducted in Schwartz's office with no interruptions by visitors or telephone calls. The taped sessions had been preceded by a preliminary conference several days earlier in which the general plan of the interview was agreed upon. Professor Oliver generally seemed pleased to participate in the project, and during the recording session he was relaxed, responsive, and imposed no limitations on the scope of the inquiry or the particular questions asked. He demonstrated an exceptionally high level of respect and admiration for both Vinson and Warren.

The rough transcript was sent to Professor Oliver, who looked it over and made very few changes.

The transcript reflects intimations of plans to conduct a series of interviews with other justices and clerks of the Warren Court. However, this never took place because it was discouraged by Warren himself. Former Justice Arthur Goldberg was personally solicited when he came to lecture to students at Boalt Hall in Berkeley, but although initially receptive to the

suggestion, he subsequently declined to participate. He was concerned about the integrity of the decision-making process of the Supreme Court, and that his views of people and events connected with it should remain inviolate.

Later, it was possible for the Earl Warren Project to conduct three other interviews on the Warren Court: Chief Justice Berger, former law clerk Martin Richman, and Rabbi Louis Finkelstein, former head of the Jewish Theological Seminary and the man who aided Chief Justice Warren in his study of Talmudic Law. These interviews are currently in process.

Mortimer Schwartz
Interviewer
Professor of Law

12 March 1976
School of Law
University of California at Davis

[Date of Interview: 17 May 1972]

I CLERKING FOR CHIEF JUSTICE WARREN: THE FIRST YEAR

Law Clerk: 1953-1954

Schwartz: Why don't I ask you to state your name, Bill?

Oliver: My full name is William White Oliver.

Schwartz: Bill, the purpose of this interview is to get some background information relating to my work on the Earl Warren Oral History Project in Berkeley. I know that you were Warren's first clerk.

Oliver: I had taken a two-year appointment with Chief Justice [Fred] Vinson with the understanding that I would be his head law clerk the second year. You may remember that Vinson died in September [1953], after I had completed one year. In fact, Warren, through arrangements made in advance, apparently by the Justice Department, kept on the three law clerks that would have been with Vinson that year.

Schwartz: Who were the other two, incidentally?

Oliver: Dick Flynn and Earl Pollock.

Schwartz: Where are they located now, by the way?

Oliver: Earl Pollock is with one of the large Chicago firms and Dick Flynn is with Sidley & Austin in Washington, D.C.

Schwartz: Have you kept in touch with them?

Oliver: I usually see them through the annual dinner for the Chief Justice that his law clerks usually give him. So, I usually see them once every few years. Dick Flynn is a fairly good friend. He has come to football weekends occasionally in Bloomington, [Indiana].

Schwartz: Is he an Indiana graduate?

Oliver: No, he's not. His wife was a very good personal friend of the daughter of the man who was dean of the Arts and Science College several years ago.

Schwartz: As I explained to you, part of the project that I'm involved in gives mainly emphasis to Earl Warren as an administrator. In that respect I've talked to a couple of people already who have given some insights, and eventually I hope to be able to talk to the justices who were on the bench with him at the time, to get their perspectives. Let's direct our attention to your experiences before, during, and after.

Oliver: I think you might talk to Earl Pollock because Earl stayed with him two years, and was his head law clerk the year after I was there.

Schwartz: You were his head law clerk for the first year?

Oliver: The first year, right. Earl [Pollock] tells me that there was quite a change the second year. The first year Warren was uncertain of his relationship with the clerks and I think he was feeling his way along on the court. His relationship with the law clerks was not as close that first year, according to Earl, as it became later.

Now, I had an arrangement with the other law clerks that I did all the tax cases. It ended up that I was writing memos in an area that at that time Warren apparently felt unsure of, and he would never take opinions in that area during the first year. He did later on do some tax opinions. As a result, a lot of my work ended up dead end as far as contacts with him. I'd write a memo about a tax case--and there were enough tax cases along to take up a big part of my one-third of the cases--and I never heard any more about it because he wasn't at that time showing much interest in the tax cases.

Schwartz: Did you have any kind of discussions with him about these cases?

Oliver: No. And that's the thing that was apparently quite different the next year with Earl Pollock, once Warren got sure of himself. I think that until Warren felt sure of himself he just didn't want to talk to his law clerks extensively. He wanted memos.

Schwartz: Did you have any other kinds of dealings with him during that year?

Oliver: Oh, we saw him occasionally. But the experience of the later law clerks was quite different on this score from what the experience was with the people who were there that first year. And Earl Pollock himself said that he had quite a different experience his second year there, compared to the first year there.

Schwartz: Do you have any ideas why that was so, why he changed in that time?

Oliver: I think he became confident in himself. See, this was quite a transition. While he had lived constitutional law, he had been away for so long from writing memos and doing research and the contemplative type of reflection and discussion that goes on in the court that I think he simply had to build up his confidence on this score. Once he did, then he had a much more open, friendly relationship with the subsequent law clerks.

I feel that since that time I have gotten to be much closer to him than I was at the time I was there. I remember one thing in particular. I told him that a New York Times reporter tried to get me to comment on him and Chief Justice Vinson and compare them, and I told that reporter that I didn't think it was anything that was proper for me to do. He [Warren] seemed very

Oliver: appreciative of that, and I get the feeling now when I go back that I'm not his favorite former clerk but at least I'm not way down the list.

Schwartz: You're not in the dog house with him.

Oliver: No. [Laughter]

Schwartz: What was the thinking and feeling of the clerks when it became known that Earl Warren had become appointed Chief Justice, before he had reported on board for active duty?

Oliver: I think there was a lot of feeling that he didn't have the qualifications and background for it, and there was a lot of feeling that it was a political deal out of the '52 Republican convention. Just as most people in academic life tend to be Democrats, I think that a very high percentage of the law clerks are Democrats and they would tend to be critical.

I guess I had a sense of obligation to my new boss, and I greatly defended at that time that he had really the kind of experience and relationship to state government, working as a prosecutor and all that, that he really had good experience and background for the Supreme Court.

Schwartz: Did the other two clerks who were with you there share these opinions?

Oliver: Yes, they did. I think they did.

The Relationship Between Justice Frankfurter and the Chief Justice

Schwartz: How about any of the justices? You probably had scuttlebutt about what they were thinking and how they reacted to the appointment?

Oliver: One of the things--by and large, the relationship is between the justice and his law clerks. One of the things that was quite noticeable at first was that [Justice Felix] Frankfurter spent a lot of time calling on Warren, and he was oh so generous in his praise before everyone about how great Warren was and what a great Chief Justice he was going to make and such. It's very interesting because later on Frankfurter was talking the other way.

Schwartz: Do you have any ideas or thoughts you want to tell me about why this turned out this way?

Oliver: I think that Frankfurter was trying to bring Warren into his sphere of influence. For some time he felt that maybe he could do this, and when he found out that he had a man that was independent and strong in his own right who he couldn't influence unduly, I think it turned to resentment and bitterness. Later on, he was pretty openly critical. It was a known hostility. It was known among the court. When I had meetings in subsequent years with other law clerks at dinners and such, there would be a lot of talk about it and it became something that was commonly known.

Schwartz: Wasn't it also commonly known that Frankfurter also tried to influence the other clerks who worked for the other justices?

Oliver: There were instances in which Frankfurter tried to charm other law clerks on key cases that he had strong views about and such. He would try to persuade the law clerk to come around to a viewpoint that Frankfurter wanted the clerk in turn to write in his memo. I felt this was improper and I think I may have offended Justice Frankfurter by refusing to talk to him about what I was going to put in my memos that were going to go to the justice I was working for.

Schwartz: When you worked there did you do other than tax memos later on?

Oliver: Well, the agreement was that I would do the taxes, because it was a specialized field and I already had some exposure to it. We clerks divided the cases, more or less, between ourselves. And since the understanding was that I would take the tax cases, by the time I got through taking the tax cases a sizeable part of my one-third share was used up. But certainly I did other memos. You get a fantastic range of things that you do memos on.

Schwartz: Did other clerks work on tax cases too?

Oliver: Not in the Chief's office because I had an arrangement that I would do all of those.

Schwartz: How about in the other offices?

Oliver: In the other offices I don't know. Some of the justices may have made the assignments of cases themselves. I'm not sure exactly how the other justices did it. But probably in most of the offices where there were two law clerks--the Chief Justice had three law clerks because they have some extra work to do that the other clerks don't have--I think they could sort of swap cases back and forth. If somebody had a particular area of interest, normally by agreement with the clerk he was working with he would get that type of case.

Schwartz: What I was wondering about is if you were the only one or one of the few who worked on tax cases, and you worked for the Chief Justice, it might be an indirect way of his exerting more influence than otherwise, at least in the area of tax cases.

Oliver: I certainly at times talked with other law clerks who would ask me about tax cases because they knew that I had worked in the field. If someone asked me my opinion about something or what I know about something, why I'd tell them, of course.

Schwartz: Now, how about the other way? Would you ask opinions of other clerks or justices?

Oliver: Oh, there's a lot of communication between law clerks. The law clerks talk about their work a lot and about

Oliver: the cases of particular interest to them. I don't think there's anything improper there, really. It's using each other as a sounding board.

What I think was improper about Justice Frankfurter was he came in as an advocate for some particular case where he had an axe to grind, and he would try to ingratiate himself with law clerks. I think there were instances where he succeeded. He could be very charming if he wanted to.

Comments on Warren's Leadership

Schwartz: Did the Chief Justice have regular meetings with the clerks in which he would go over the internal business of the clerks?

Oliver: I understand he did later on, but he did not during that year I was there.

Schwartz: How about his meetings with the other justices? Did you get any feedback about how they went? Did he conduct a good meeting and so on?

Oliver: No, I really don't have any feedback on that. I do know this. I think I saw enough to see that he was a quiet, behind-the-scenes negotiator and that he did an awful lot of one-on-one going around to talk to the justices. To some extent he would try to persuade them to a particular viewpoint outside the conference, but

Oliver: I'm sure that's always going on. I have reason to think that he is very effective in that sort of thing. His obvious decency and goodness, I think, would make him persuasive in trying to swing somebody around to his viewpoint.

Schwartz: Did you ever see him get angry?

Oliver: No, but I'm sure he could and would be very firm when he was angry.

Schwartz: You never heard about him getting angry openly with anybody?

Oliver: No.

Schwartz: He was probably a pretty good diplomat about that sort of thing.

Oliver: Probably, but of course a man couldn't hold the offices that he's held without having strength of character. I mean, I'm sure when the time came if anybody was treating him unfairly he could let them know his position without there being any lack of understanding what it was.

Schwartz: When I interviewed the Chief's son, Bob Warren, Bob talked about the charisma the Chief Justice had. Even when he would go fishing or hunting, he would catch the biggest fish or shoot the biggest deer and so on. Did you sense this kind of charisma when he came on the bench there?

Oliver: Well, he <u>looks</u> like a Chief Justice--his size and such.

Oliver: You get the obvious feeling that this is a good man. This is a man who wants to do right as he understands right, and he's going to strive as much as he can to do that.

Schwartz: He's the kind of person that engenders confidence and a feeling that he's honest and so on?

Oliver: Yes, I think so.

The Court and Other Branches of Government

Schwartz: Did you hear anything that would give any kind of picture of how he got along with other branches of government?

Oliver: A very interesting thing happened at the dinner for the Chief given by his law clerks. This is always in May. In May, 1968, Lyndon Johnson had already announced that he wasn't going to run for re-election, but he came to the dinner for the Chief Justice that the law clerks gave and stayed there for, oh I'd say probably forty-five minutes and presented a gift to Warren and paid tribute to him. It became clear from talking to another former law clerk who was working at the White House at the time that Warren and Johnson had developed a close friendly relationship, and that they saw each other with some degree of regularity, probably.

Oliver: It was interesting, by way of comparison, that Fred Vinson and Eisenhower were close personal friends. On more than one occasion I drove Fred Vinson to the White House in my car. His wife would have their car and he would ask me to come drive him down to the White House to play bridge or something like that.

Schwartz: Did Eisenhower ever come over to any dinners or anything like that?

Oliver: I don't know about their evening things. Eisenhower came to the court when Warren was sworn in. It's a very short ceremony, to be sworn in. It's just taking the oath of office. Eisenhower walked out and said, "My gosh that was short." He was surprised. [Laughter]

Schwartz: He thought it was going to be like a presidential inauguration?

Oliver: I guess so.

Schwartz: How about relationships with the legislature, with Congress?

Oliver: During his time on the court I really don't know. I don't think I have anything to help you with on that.

Schwartz: How about any problems of budget, appropriations and the like?

Oliver: I suppose there was some resentment, particularly by Southern Congressmen after Brown v. Topeka Board of Education, but I wasn't around at that time.

Schwartz: How about in terms of attitudes about the FBI and

Schwartz: J. Edgar Hoover? Did you ever hear about anything there? I'm not fishing for anything specific.

Oliver: I'm under the impression that Warren probably felt that J. Edgar Hoover was probably a little too enthusiastic in pursuing his duties and might be overzealous. I don't know what I particularly attribute that to, but I'm pretty confident that that was his attitude. Whether I might have overheard him say something at some time about it or not, I can't recall, but I think that would be his position.

Schwartz: Did Warren, or any of the other justices for that matter, but particularly Warren, say anything about the problems of things like congestion in the courts, the administration of the court system--not the United States Supreme Court so much but all the other courts in the system? (After all, he is the Chief Justice of the United States.)

Oliver: I don't know whether I've heard it or read it, but I have had some contact with a speech he made later on in which he addressed himself to these problems. I'm sure it was an area of concern for him, but I didn't have, during the year I clerked, any direct contact with that.

Schwartz: You didn't hear anything and he didn't say anything, or there wasn't any lobbying to that effect about that sort of thing?

Oliver: Not during my year there.

Schwartz: Because as I think about it now I remember that the federal rules were enacted in '39 and they dealt with a lot of the problems.

Oliver: He got very active in this area a few years later on after I worked there, as I remember. I didn't follow it very closely.

The Chief and His Staff

Schwartz: All right. Well, as I explained this is just an exploratory digging for information and names and suggestion of where I could proceed. Can you think of any other people who might have information, particularly about Warren's role as administrator, that might be useful?

Oliver: A very interesting person for you to talk to would be Mrs. McHugh, Margaret McHugh. She was his secretary. She's very interesting. She was secretary for Secretary of Treasury [Henry] Morganthau. Then she stayed on as secretary for Vinson when he went to the Treasury Department. Then she went to the court with Vinson and then when Warren came in he kept her. She's a very able woman and she's had an amazing exposure to a number of high men, being a personal secretary to three very important men.

Schwartz: Did Warren bring in any of his own secretarial crew?

Oliver: He brought in one girl who had been with him in the office out here.

Schwartz: Helen MacGregor? Is that the one?

Oliver: No. I can't think of it at the moment. He brought one girl who was with him out here. A tall girl.

Schwartz: I can get her name. I suspect her name is already known by the staff at Berkeley.* How about anybody else?

Oliver: There's the two law clerks I already told you about.

Schwartz: Of all the justices around the bench when he was there, could you categorize those who were favorably disposed towards him and those who were less favorably disposed?

Oliver: I don't think during the year I was there that there was any tendency to be unfavorable that developed towards him.

Schwartz: Was Frankfurter able to rally any cohorts?

Oliver: Well, during the year that I was there Frankfurter was still singing the praises of the Chief Justice.

Schwartz: But, from the outside looking in later, after you left, what is your belief about how things were?

Oliver: The chief effectiveness of Frankfurter was to get a feel of the law clerks who thought they were great intellectuals, to get them to think that the Chief wasn't

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*Margaret Bryan

Oliver: intellectual, and to be kind of contemptuous of him. I doubt if he was too effective with the other justices.

Schwartz: What about the area of civil rights? When Warren was attorney general he was involved in the Japanese relocation situation out here. Was that a ghost that haunted the situation?

Oliver: I never thought about that as a possibility. Really, I was kind of surprised later on when some of the opinions in the civil rights field came out. Fred Inbau, one of my teachers at Northwestern, was strongly against the exclusion of confessions, for instance. As long as there was evidence that they were reliable, he felt that they ought to be admissible. He's written books on this. He more or less persuaded me to that viewpoint; I was his student. So my great admiration of Warren doesn't come because I agree with him on everything, but in spite of the fact that on many things I wouldn't agree with him.

Schwartz: How influential do you think the clerks were?

Oliver: Oh, "The law clerks don't vote." A law clerk occasionally, if an obscure matter came up that the law clerk had a strong position on, might be able to persuade the justice on something the justice didn't particularly have a strong reaction to. But that would be a rare case. Mrs. McHugh used to say, "Law clerks don't vote." I think many law clerks go out afterwards spreading stories

Oliver: about how they were the real power behind the throne, but I think they're deluding themselves.

Schwartz: How about the accusation that the clerks were the source of breaking of confidential information and that sort of thing? I think I've heard it said about the Rule of Four* that the clerks leaked it and this sort of thing.

Oliver: It may have happened on occasions. I'm sure I never did it. But you can't have the turnover of law clerks that they have without getting some people that aren't discreet. I think by and large law clerks have been pretty faithful in keeping the trust.

The Other Justices

Schwartz: Was Warren friendly with the other clerks who worked for other justices? Did he acknowledge their existence?

Oliver: Oh, sure. He was just friendly. Why, that man has been in politics!

Schwartz: Yes, he said hello to everybody.

Oliver: Oh, sure. The one that was hard to get to say hello was William O. Douglas. I used to practically block his way

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*The Rule of Four: On a petition for a writ of certiorari the practice of the Supreme Court is to grant the writ if at least four justices so vote.

Oliver: coming down the hall and bow low and say, "Good morning Mr. Justice," and make him say something.

Schwartz: Would he say something?

Oliver: Yes, he'd say something then. [Laughter]

Schwartz: Did he ever call you by name?

Oliver: Oh, he'd say something. [Laughter]

Schwartz: Besides the Chief Justice, who else were the gregarious types?

Oliver: Undoubtedly at the time I was there most clerks would tend to have a loyalty to their own justice, but outside of that, if they started naming their second favorite, Robert Jackson was the man that came in a tremendously high number of times. He usually gave a little cocktail party for the clerks, usually about the end of the term. He was just a tremendously likeable person.

Schwartz: Did the clerks have their own favorite candidate for Chief Justice?

Oliver: You mean like they would like somebody from inside the court?

Schwartz: Yes.

Oliver: I don't remember. But, of course, they weren't in any position to affect the decision.

Schwartz: But, they might reflect the subjective --

Oliver: They might be hoping it would be their justice.

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Oliver: They might be hoping it would be their justice.

Schwartz: How about the justices? Did they have an inside candidate?

Oliver: If so, I didn't become aware of it.

Schwartz: I was asking that only to see whether there could be some exploration of how the inside candidate reacted to Earl Warren when he came on the bench. Were there any jealousies or rivalries other than the kind like you described with Frankfurter?

Oliver: I don't know. I suppose most of them were discreet enough to not speak out if they did have any sort of feelings that "Eisenhower could have done better by picking me." Of course, many of them were Democrats and knew automatically that they had no chance. [Justice Harold] Burton was a Republican, but Burton was already then not in too good health. I'm sure that a man like Frankfurter was ambitious enough to have wanted to be Chief Justice.

I think maybe the fact that it was a Republican president and they knew it was going to be a Republican appointee kept them from making any type of effort to-- I know that often times with judgeships there are not campaigns for public office like when you vote publicly, but frequently people are contacting people they know and saying, "Put a good word for me to the Attorney General

Oliver: and tell him I'd be interested in such-and-such." I don't know if any contacts were made like that or not, but I think if they were, they were probably told that it was, of course, going to be a Republican appointee for Chief Justice.

Schwartz: Did you hear anything about the social activity of the justices? Did they get together and have cocktail parties or dinners with their wives and other justices and their wives, etc.? Was that a regular thing?

Oliver: I was never invited to any such function. I assume that they would. Of course, they, and particularly the Chief Justice, get a certain number of invitations from the embassies and such things and it's very hard for them to turn them down. Although, who was it? I know one of the Chief Justices was supposed to have had a very firm rule that he greatly limited the number of things he would go to.

Schwartz: How about dinners just for the justices and their wives? Just to bring them all together on a social occasion?

Oliver: I really have no knowledge of that side of the picture. Now, Mrs. McHugh probably could tell you a lot about that because she certainly was the social secretary in addition and she certainly is the person you want to talk to. Of course, I don't know if she's still on his payroll

Oliver: or not. She may be, but it might be that without his consent you might not get to talk to her.

Schwartz: I'll look into that. Did you ever see any indication that the justices would gossip about each other or about other people? Did they ever talk loud enough for clerks to hear that sort of thing?

Oliver: No, I don't know. During my year that I was with Vinson there were certain buddies of his that were constantly in the office, like [Sherman] Minton and [Tom C.] Clark who were constantly there with him. They were just sort of a natural group of friends. I suspect that by that time there was considerable animosity between some of them and Frankfurter.

Schwartz: Was [Jim] Ryan clerking for Minton when you were there? Does that name ring a bell with you?

Oliver: Ryan?

Schwartz: Yes. He's practicing law in Tulsa, Oklahoma now.

Oliver: He clerked for Burton. Yes, sure. He's a good friend of mine.

Schwartz: He graduated from the University of Pennsylvania as I remember. He's an Oklahoman. He became quite an expert on the Uniform Commercial Code.

What do you clerks talk about when you go back to the annual dinner?

Oliver: Well, usually you get to know a few clerks from the other

Oliver: terms that you talk with a lot. I'd say it was typical conversation of what people have been doing and current events. This year I'm sure it will be the presidential race.

Schwartz: Do you have any speeches?

Oliver: It's traditional that the Solicitor General attend and frequently he makes a speech.

Schwartz: What kind of a speech? A great message or just something lauding the Chief?

Oliver: Lauding the Chief type of thing. Short.

Schwartz: With a joke or something.

Oliver: Right.

Schwartz: How is the Chief about recognizing and remembering all the clerks?

Oliver: I think he's excellent on it.

Schwartz: A first rate politician.

Oliver: "Oh, Bill..!" [Laughter]

[Interruption]

II CHIEF JUSTICE FRED VINSON

Schwartz: Bill, since you were the clerk for Chief Justice Vinson before Chief Justice Warren, let's talk about Vinson for a bit because he has such an interesting biography. As you mentioned to me before, there ought to be a biography written on him.

Oliver: There ought to be a biography on him. I've threatened to do it if nobody else will do it. I don't know if I could ever get organized to do it. But as I was saying when we didn't have the recorder on, Vinson smoked about three packages of cigarettes a day. He went to all the Embassy Row parties and apparently couldn't resist the good food. He was very much overweight. He was probably fifty, sixty, seventy pounds overweight.

He died something like fifteen years short of what should have been his longevity based on his family history, because he had relatives that lived into their eighties and nineties. Perhaps, it's an ironic matter, but if Fred Vinson had not been a heavy smoker and had kept his weight within proper limits, probably Earl Warren would never have been Chief Justice of the United States.

Schwartz: That's an interesting point. I hadn't thought about that. And it probably would have been a Democratic Chief Justice years later. No, that fifteen years would have carried

Schwartz: up to '69, so there would have been another Republican Chief Justice, but not an Earl Warren.

Oliver: I don't know what Warren would have done, with Eisenhower. With Nixon he couldn't have had any chance for the presidential nomination any time short of 1960. And probably at that time he wouldn't have tried at that age for a presidential nomination.

Schwartz: Well, let's go into this highly irrelevant point. Let's assume that Vinson had lived through his life expectancy. How do you think the civil rights cases would have come out?

Oliver: I think that there's no doubt that on many of the exclusionary rules and such, Vinson would have come out the other way. Vinson tended to have the ability to hold--at least on that type of case, he could almost count on Minton, Clark, and [Stanley F.] Reed. All he had to do was get one more man, which they would generally get, in fact. They would usually get Burton for the fifth man. If Eisenhower had appointed someone like John Marshall Harlan, the top people he would appoint would likely have strengthened that vote rather than weakened it. Well, of course, that wasn't true in the case of [William J.] Brennan. Well, that's probably all I'll ever say about that.

Schwartz: All right. What are your recollections of Vinson as an administrator?

Oliver: Oh, that man was fabulous. Can you find anybody else that had a career of being at the very top in the Congress and at the very top of the executive branch and being Chief Justice of the United States? Vinson was a real power in the Congress of 1930s. Doughton was Ways and Means chairman, but in a very effective real sense Fred Vinson did the work and had the influence.

Schwartz: He was a representative from where?

Oliver: Kentucky.

Schwartz: And this is your home state.

Oliver: The reason that I got to be law clerk was not through the Kentucky angle but through a professor at Northwestern that had been a law clerk of his at one time and who had more of an in to send a law clerk to him regularly.

Schwartz: It didn't hurt to be from Kentucky, though?

Oliver: No sir!

Schwartz: How did Vinson work out keeping the other justices under control?

Oliver: Well, he was a negotiator. He was a behind-the-scenes working man too, I'm sure, constantly mending fences with the other justices. He had, as I say, the four that he more or less got together as a group that he could

Oliver: rely on in most of the areas that he felt very strongly about.

Schwartz: Was he regarded as a scholar?

Oliver: He deserves more of a reputation as a scholar than he has. A very shrewd, a very able man. I have reason to believe that Truman wanted Fred Vinson to run for president in 1952. At that time probably Truman could have put him over. It was later on that Truman switched to Adlai Stevenson to support. But I have reason to believe that Vinson thought that the security of the Chief Justiceship wasn't worth giving up for a possible chance at the presidency.

Schwartz: Did Vinson have experience as a trial lawyer? What kind of experience did he have as a lawyer, or was he always a politician?

Oliver: He went to the Congress after about only three or four years in practice. But I would assume that he had certainly had courtroom experience during that period of time. I have a vague recollection he might have been a prosecutor. He went to Congress in 1924, I think.

He probably could have had a professional career in baseball. He was a very good baseball player. In the routine thing of the Congressional baseball games between the Democrats and the Republicans during the time that he was in the Congress, he would usually be the star of the game.

Schwartz: What position did he play?

Oliver: I'm not sure.

Schwartz: Did the clerks attend the oral arguments?

Oliver: To a certain extent. Not regularly, but occasionally you might drift in and out and hear some of it. If it was an extremely important case or something like that you would probably go.

Schwartz: Did the clerks help prepare questions for their justices to ask at an oral argument?

Oliver: I never did it. I wouldn't say that it had never been done by anybody else. Sometimes, particularly Vinson would talk to us about ideas and such and it might lead to some question he would ask.

Schwartz: Did all the justices read the briefs before oral arguments? Was one assigned to do it? Did none of them read it?

Oliver: I think the basic function of the law clerks is to be extra reading eyes. I remember once Frankfurter asked this attorney in a case, "Why didn't you file a shorter brief?" The attorney had filed a brief of something like a hundred and fifty pages, and he answered, "I didn't have enough time." [Laughter] To some extent I think this is what law clerks do. They relieve the justice of the necessity of reading a hundred-and-fifty page brief by boiling it down to what the justice ought

Oliver: to read, and then it's maybe only a ten or fifteen page memo.

Schwartz: Do they help the justices shorten their own opinions that they write?

Oliver: I'm sure it's happened in some offices.

Schwartz: What comparison can you make between the way Vinson handled oral arguments as Chief Justice and Earl Warren sitting there in the same chair?

Oliver: I don't think there was a great deal of difference. I mean, each of the justices asks questions on their own. He doesn't turn to ask what the chair recognizes.

Schwartz: Do they take turns?

Oliver: No, the procedure is just usually first come, first serve. Of course, you undoubtedly have the information about the flare-up when Frankfurter tried to restate a question for Warren in oral argument?

Schwartz: No, I don't have that. Tell me that one.

Oliver: Well, it was reported in various magazines and newspapers at the time. Warren was addressing a question to counsel and Frankfurter interrupted and said, "If I may state the question for the Chief Justice..." And Warren turned to him and indignantly said he could state his own questions, that he didn't need any help.

Schwartz: What case was that?

Oliver: I don't know. It happened about five or six years after the relationship had ceased to be cordial between the two.

Schwartz: Did they speak to each other?

Oliver: Oh, I'm sure they spoke to each other. But it was superficial, without any deep warm regard for each other.

Schwartz: Did Frankfurter try this on any of the other justices?

Oliver: I wouldn't know. I wouldn't be surprised.

Schwartz: Have you heard anything of how [Chief Justice Warren] Berger has changed the court?

Oliver: Not really.

Schwartz: I understand he's even changed the place where the conferences are held. Now all the justices go to his office.

Oliver: Well, it's a big enough office. Of course, the conference room was right next to his office.

Schwartz: How about the attitude of the justices? Do you think that would bother them?

Oliver: No. I don't see why it should.

Schwartz: Well, one former justice has expressed the opinion that he wouldn't go to that conference room.

Oliver: Really? Who is that? [Interruption] The Chief Justice's ability to have impact on the other justices is primarily in terms of his persuasive powers and his ability to keep a good relationship with them. I think that with the

Oliver: exception of Frankfurter, Warren probably did a superb job on that with everybody he ever had any contact with. At least, if there was ever any friction between him and other members of the court I haven't heard of it.

Schwartz: Well, I guess we've talked enough.

Transcriber: Marilyn Fernandez

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October 9, 1974

Prof. Mort Schwartz
School of Law
1102 King Hall
University of California-Davis
Davis, California 95616

Dear Prof. Schwartz:

Thank you for getting back to me so quickly with the information on the Rule of Four. I've added it in as a footnote.

I'm enclosing the Oliver interview, edited and with a list of questions for him. Could you look it over and send it on to him for his corrections and additions, then send it back to us when he returns it? Chita and I looked over the interview, and a couple of further thoughts came to us that perhaps you could pass along when you write Bill Oliver, or fill in yourself.

One concerns the Brown v. Topeka Board of Education case, which Oliver didn't talk about at all. Earl Warren in his as-yet-unpublished autobiography talks about the procedure used in reaching the Brown decision and in writing it, and it would be interesting to see what Oliver's recollections are on that.

According to Warren, the justices agreed to handle the Brown case differently from their usual practice. The usual procedure was that in their conferences, for each case, the Chief Justice would first state his opinion and then each justice in turn, without discussion, would give his opinion. Discussion would then follow. In the Brown case, the justices were impressed with the importance of the issues and the desireability of achieving unanimity. As a consequence, they chose to dispense with the usual procedure, and instead conducted informal discussions each day based on the briefs, oral arguments, and their own research, reserving their final opinions until the discussions were concluded. In February, 1954 they agreed they were ready to vote, and the vote was unanimous.

I wonder if Oliver was aware of the ongoing discussions about Brown and could comment on them. Also, if he has any thoughts on how Warren achieved unanimity on the decision and which, if any, of the justices initially had reservations about the case.

In his autobiography, Warren then goes on to describe how the decision was written, that it was decided he should write it, and that it would be done with the greatest secrecy. It was agreed that only Warren's law clerks would be involved, and any writing between Warren and the other justices would be delivered personally. Was Oliver at all involved in helping Warren to prepare the decision? Or does he remember hearing anything from the other two law clerks? Did the clerks meet with Warren about the Brown decision?

We also wondered about the fallout and reactions to the case around the Court. Perhaps you could ask Oliver about what he heard, or what rumors were floating around the court after the decision.

And now a question for you: I think we should say something, perhaps in an introduction, about your intention to talk to the other justices and what happened to your plans. Otherwise, earnest researchers might search in vain for the rest of the interviews. Could you summarize for me what happened (or is going to happen) re the other justices?

Chita sends hellos. She's just back from the OHA Colloquium in the Grand Tetons, and is about to depart for points East, so as you can see things are hopping here. And now with the state legislature's wonderful shot in the arm to the Warren Project, we can wrap up the Project the way it should be done.

Sincerely,

Mimi Feingold

Mimi Feingold

P.S. Another question for you: on page 25 of the manuscript you mention in a question à justice who did not want to attend conferences in Berger's office. Do you want to name the justice?

INDIANA UNIVERSITY
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LAW BUILDING
BLOOMINGTON, INDIANA 47401

TEL. NO. 812—337-3939

January 13, 1975

Mr. Mortimer Schwartz
School of Law
1102 King Hall
University of California-Davis
Davis, California 95616

Dear Mort,

I return herewith the copy of the transcript on which I've done some slight editing. On page 21, I believe the reference to "Marshall" in the 3rd line was meant to be to John Marshall Harlan, who usually went by the name John M. Harlan.

I did not do initial work on the opinion in Brown v. Board of Education, but did do some on Bolling v. Sharpe, a companion case from the District of Columbia. I saw drafts of the opinion in Brown, and may have made minor suggestions which were reflected in the final draft.

Chief Justice Warren called Earl Pollock, Dick Flynn and me to his office--no one else was present. He told us of the unanimous result in the school segregation cases. It was apparent that he had not communicated about the vote or result previously to any of us, and probably not to anyone else, including his wife. We discussed work on the opinions, and were warned to secrecy. Warren spent a lot of time in the fall and winter of the 1953 term in the chambers of other justices. I believe he was trying to line up a unanimous vote; from a statement later on by a Reed clerk, I believe Stanley Reed was a hold out and probably the only one.

Lack of news about the school segregation cases among the clerks was noticeable during the fall and winter of that term. The surprise was not at the result, but that it was unanimous.

I hope this helps you and Mimi Feingold in your project.

Best Wishes,

Bill Oliver

William W. Oliver
Professor of Law

WWO/slb
Enc.

INDEX - William Oliver

Brennan, William, 24
Burton, Harold, 19

Clark, Tom C., 21-24

Democrats, 5
Douglas, William O., and Supreme Court law clerks, 17-18

Eisenhower, Dwight D., relations with Fred Vinson, 12

Flynn, Richard, 1-2
football, fans, 2
Frankfurter, Felix:
  as Supreme Court Justice, 19, 27
  and Earl Warren, 6, 15-16, 28-30
  and law clerks, 7, 9, 15-16

Harlan, John Marshall, 24
Hoover, J. Edgar, Earl Warren's opinion of, 12-13

Inbau, Fred, 16

Jackson, Robert, 18
Johnson, Lyndon B., relations with Earl Warren, 12

law clerks, Supreme Court, 6-8, 15-18, 21-22, 27-28
  to Earl Warren, 1-11, 15-17, 21-22

McHugh, Margaret, 14
Minton, Sherman, 21, 24

Oliver, William White:
  law clerk, Supreme Court, 27-28
    to Fred Vinson, 1, 12, 23, 25
    to Earl Warren, 1-11, 15-18, 21-22

Pollock, Earl, 1-4

tax cases, U.S. Supreme Court, 3, 7-8

Reed, Stanley, 24

Vinson, Fred:
  as Chief Justice, 1, 12, 21, 23-26
    compared with Earl Warren, 4, 28-29
  in Congress, 25
  and President Eisenhower, 12

Warren, Earl, as Chief Justice:
  appointment, 5, 18-19
  swearing in, 12
  as administrator, 2, 9-11, 13-14, 29-30
  compared with Fred Vinson, 4, 28-29
  law clerks, 1-11, 15-17, 21-22
  opinion of J. Edgar Hoover, 12-13
  relations with Congress, 12
  relations with Frankfurter, 6, 15-16, 28-30
  relations with President Johnson, 9
  social activities, 20
  tax opinions, 3

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Earl Warren Oral History Project

Martin F. Richman

LAW CLERK FOR CHIEF JUSTICE WARREN, 1956-57

An Interview Conducted by
Amelia R. Fry

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TABLE OF CONTENTS -- Martin F. Richman

INTERVIEW HISTORY	i
CONTEXT OF THE 1956-57 COURT TERM	1
OPERATIONS WITH CLERKS	4
IN-COURT FORUMS OF DEBATE	7
ASSIGNMENT OF OPINIONS: A CONSENSUS TECHNIQUE	9
BENCH BEHAVIOR	12
RELATIONS OF WARREN WITH CLERKS	13
INDEX	16

Date of interview: October 30, 1975

Place of interview: Mr. Richman's law office in Barrett, Smith, Schapiro & Simon, 26 Broadway, New York.

Those present at interview: Mr. Richman and the interviewer, Amelia Fry.

Transcript sent to Richman for review: November 24, 1975

Transcript returned to this office: December 31, 1976

The Interview

Martin F. Richman was one of Chief Justice Earl Warren's law clerks for the 1956-57 term. Mutual acquaintances and other former law clerks had recommended that we interview Mr. Richman in the course of our next eastern trip, so when such an opportunity arose, an enthusiastic intermediary in New York arranged the appointment.

During this one session Mr. Richman proved to be a man of considerable kindness and aplomb, for when the interviewer appeared, tape recorder in hand, at 10:30 sharp, the busy attorney was not expecting her. A slight muddling of communications -- the sort that easily happens when messages are transferred from person to person -- had turned his general agreement for an interview into a definite time for one. Scarcely missing a beat, he put his work aside, helped the interviewer set up the recorder, and proceeded with an impromptu session.

In his answers to questions he organized the points in his mind and related them in an orderly fashion. He is especially good at laying the context of what was general court procedure and placing his story or point within it, the better for lay minds to understand and interpret. He was relaxed but polite, interested but careful to state his thoughts accurately.

When he reviewed the transcript he filled in a half dozen blanks where the tape was inaudible, and he made his language more specific in some places. But the changes are very few. Even though his letters to the office show lively style and a delightful flair for the apt phrase, he was willing to forego his underlying literary tendencies in the transcript to preserve the more informal conversational elements for the integrity of the interview.

Amelia R. Fry
Interviewer-Editor

20 May 1977
Regional Oral History Office
486 The Bancroft Library
University of California at Berkeley

3/19/75

MARTIN F. RICHMAN

Member of the law firm of Barrett, Smith, Schapiro & Simon, New York City. In private practice with this firm (then Root, Barrett, Cohen, Knapp & Smith), 1957-1966; member of the firm, 1962-1966. Resumed membership in firm on return from government service, June 1, 1969.

In government service, 1966-1969, as Deputy Assitant Attorney General, Office of Legal Counsel, United States Department of Justice.

A public member of the Administrative Conference of the United States (1970-); Chairman of its Committees on Rulemaking and Rulemaking and Public Information (1970-1973).

Chairman of the Committee on Federal Legislation of The Association of the Bar of the City of New York (1972-1975); previously served with its Committees on the Bill of Rights, Civil Rights under Law, and Federal Legislation. Member of the Council of the ABA Administrative Law Section. Member of the American Law Institute.

B.A. St. Lawrence University, 1950; LL.B. Harvard, 1953; Case Editor of the Harvard Law Review. Following military service, was law clerk to the late Calvert Magruder, Chief Judge, U.S. Court of Appeals for the First Circuit (1955-1956), and to the late Earl Warren, Chief Justice of the United States (1956-1957).

CONTEXT OF THE 1956-57 COURT TERM
(Date of Interview: October 30, 1975)

Fry: Let's start with your appointment, when you became a law clerk to Earl Warren.

Richman: Actually I first met the Chief [Justice] in Puerto Rico. I was law clerk for Judge Magruder, of the United States Court of Appeals for the first Circuit (this was in 1955-56). I had originally thought that I would just take that one year of clerking; I had finished law school in 1953 and had spent two years in the army. But on a trip to Washington (this was January, 1956) I talked to various people in the Justice Department and elsewhere in government about a government position, and they all said I was crazy not to seek a second year clerking at the Supreme Court. I was on my way to Puerto Rico to meet Judge Magruder there for a court session of the Court of Appeals, and at the time that a new building was being dedicated for the Supreme Court of Puerto Rico. Chief Justice Warren was one of the speakers and honored guests, and so Judge Magruder introduced me to him on the terrace of La Fortaleza, which is the Governor's palace in Puerto Rico. We chatted for a few minutes and I told him I was interested in becoming his law clerk, and he suggested that I write a letter. I did that and eventually received word that I had been selected to become one of his three law clerks for the following year.

Fry: Were there any particular cases in the year that you were there that were outstanding?

Richman: Well, it was a year in which there were a large number of cases dealing with various aspects of the criminal prosecutions and legislative investigations of the Communist party and other

Richman: alleged subversives. There were quite a number of decisions that came down that curbed both legislative investigations and the Smith Act prosecutions. Watkins and Sweezey were the two leading cases in the legislative investigations area, one related to Congress, the other to state legislatures. There were a fair number of criminal cases; this was the second round of Smith Act cases, following the Dennis case, which had occurred before Warren became Chief Justice and which had upheld the Smith Act. In the later cases there is a kind of whittling away of its impact.

There were also the beginnings of the general criminal procedures decisions that characterized the Warren court in later years. I can't think of any of those that were particularly outstanding, but they showed the beginnings of concern for the fairness of criminal procedures. Right at the outset of the year there was an interesting illustration of that. One of the very first things that happened was that Lee Rankin, who was then new as the Solicitor General, appeared in the Court to confess error in the case that was called Mesarosh v. United States. Mesarosh was Steve Nelson, a Communist leader in Pennsylvania, whose conviction under the Pennsylvania sedition laws had been before the Court the preceding year in the Nelson case. In Mesarosh, which was a Smith Act conviction, the Government had discovered that a key government informer witness had perjured himself in a subsequent trial. The Solicitor General came in to confess error on that point and to request the Court to send the case back for a hearing to see whether that situation affected the Mesarosh case itself. The response of the defense counsel to that was that the conviction should be thrown out on the spot. Chief Justice Warren wrote the opinion--it was one of the very first opinions of that Term--and it was very characteristic of him in that he got to the very heart of the matter. He used a phrase something like the "well of justice has been poisoned" by the injection of the testimony of this person, and that the only way to purge it was to reverse the conviction. We couldn't accomplish justice by sending the case back to a trial judge to have a hearing, for he would have to come to the conclusion that the Supreme Court was coming to right on the spot, namely that it was improper to convict someone on the evidence of a perjurer. And that was very typical of Earl Warren's reaction to a situation of injustice, to get right to the heart of it, not to look for an interim type of solution but to go right in and treat it as a basis for a definitive constitutional decision.

Richman: And this of course shows up in later decisions on police questioning of suspects and the right to counsel.

We didn't have any major segregation cases that year, at least none that seemed to be major. But there was a case that, in retrospect, was very important. One of the questions after Brown v. Board of Education was whether the principle of the case was going to be applied in areas outside education. Brown, of course, was decided in the spring of 1954, and the second decision in the case, the implementation opinion, was in the following year, the spring of 1955. I came in the fall of 1955, which was really just one year later and there was still no answer to this question. But a case which came up fairly early in the Term was the Birmingham bus case, Gayle v. Browder. This was a civil case, on direct appeal from a three-judge federal District Court, in which Dr. Martin Luther King and his group in Birmingham were attacking the segregation of buses in that city. It was decided by the court per curiam, which means that on the initial papers the court decided the case without hearing oral argument. The Chief Justice called the law clerks into his office, as was his custom, following the conference of the Court. He usually called us in on a Friday afternoon after the conference, but I recall this occasion being early in the morning so it must have been Saturday morning; perhaps the conference had ended very late. He told us that the Court had decided to dispose of the case per curiam, without hearing oral arguments. The three-judge District Court had ruled against the segregation, and city officials and the Alabama Public Service Commission were appealing. Thus the decision of the Supreme Court was to affirm that decision below. And the Chief said that they were going to cite three cases: Brown v. Board of Education, dealing with school segregation of course, and the Baltimore and Atlanta cases of the 1955 Term that dealt with segregation in other public facilities. I think one was a golf course case and the other was a park or something like that. No case in the Supreme Court up to that point had dealt with segregation in a public facility like a bus service that was privately owned but regulated by government. And so by that simple one-sentence decision, with those citations, the principle was established, carrying over the Brown ruling and the other cases into governmentally regulated areas. And of course that had a great deal of expansion later on.

Fry: At the time, this didn't seem all that earth-shaking to you?

Richman: It certainly was clear that it went beyond what the law had been previously, but it was done by the Court rather matter-of-factly and of course, in this type of decision, without laying out any reasoning.

OPERATIONS WITH CLERKS

Fry: If we have a pretty good picture of the context of that year now, I'd like to go on into anything you could tell us about how Earl Warren operated in this, and how much he brought you into it.

Richman: Well, I should say, preliminarily, that his method of operating evolved over the years. We were there in his fourth year on the Court, and of course he continued on the Court for twelve years after that. I know from the continuing contacts that I had with later law clerks, both through the annual dinners that we had with the Chief and through other connections, that his method of working with law clerks did evolve and become more intimate in the later years. In the first few years, at least based on my experience, he was still trying to carry over, to some extent, the system of operation that he had in California as governor. He had a very large staff there, a very large number of people responsible to him, and so they were of course funneling their work product up to him through channels. But at the Court there were three of us who were law clerks; two of us were in the office that was across the conference room of the Court from his own office, and the third worked in an office in the front of the building.

Generally, the operation was that we would write memos on the cases, which would go up to the front office to the Chief's secretary, who would then gather them into groups of memos on the cases that were coming up at a particular conference of the Court. She would send them to the Chief at a given time, three or four days before the conference; he would have them in a little notebook and would start reading through them. He might call you occasionally if he had a question on a memo, but generally not. Generally he took the memo and there wasn't much back-and-forth contact other than that. We did have more of a give-and-take working with him in the preparation of opinions,

Richman: when he would call in one clerk, usually, but sometimes more than one, outline to him what he intended to do in the opinion, and provide either a draft or an outline in varying degrees of completeness. Then the law clerk would fill in around what the Chief had written, putting in citations, of course, footnotes and that sort of thing. Then as further drafts were prepared, you'd work together back and forth on the editing.

He also, as I mentioned earlier, would call the law clerks in after each conference. There would be two parts to that session: First would be a meeting in which the Clerk of the Court, who handled the administrative side of the Court's decisions, would also be present, and the Chief would simply be reading off the decisions. There were forty or fifty petitions for certiorari each week, aside from what would typically have been half a dozen cases coming down on the merits, and he would simply advise the Clerk to prepare the orders list reciting what the decision had been on each one of them. Generally the Court just granted or denied these petitions, and sometimes it was a fuller decision. We didn't really participate in that. We were just listening at that point, unless there was some technical question about how the order in one of these matters should be framed for the orders list, in which case the Chief would ask one of us to write that out for the Clerk.

I started to explain earlier about the Birmingham bus case, when the Chief, after having given us that decision, asked me to write that out as it appears in the U.S. Reports. It's just a simple sentence with the citation of the three cases. But in most of those situations, it was a question of his reporting to the Clerk, and the Clerk would then go off to prepare the mimeographed orders list which would be handed out on the following Monday. It had to be circulated to the justices over the weekend so they could check beforehand that everything was in order.

Then the Clerk would leave, and there would just be the Chief and the three law clerks. He would review the conference with us and summarize the discussion that had taken place among the justices, chiefly in connection with the cases that had been argued on the merits that week and were coming up for tentative decision. These would not have been reported to the Clerk because, while the justices had taken a vote, the opinion still remained to be written and wouldn't be handed down as a

Richman: judgment until weeks or months later. He would review with us what the discussion had been, who said what and how the votes came in, in varying degrees of detail depending on our interest in the particular case and of course on his interest in the case.

Although the justices basically operate on the principle that everything that is said in the conferences is confidential, strictly among themselves, I think this is pretty customary: Most of the justices do relate to their law clerks what the flow of discussion was in the conference. This is helpful to the law clerk who will be working on the opinion in the particular case, to know what the ideas of the other justices are on the case so that he can accommodate them in drafting the opinion. It's part of the process of judge and law clerk working together and sharing thoughts on the cases before that court.

Fry: When he was relating to you what went on in the conferences, did he use a fairly reportorial, objective way of stating what had happened, or did he ever let you know how he felt about it?

Richman: We knew his views of the cases because, very likely, there would have been some discussion with him before the conference. But not always. That usually would have happened, I guess, where he would have raised a question about the memo before the conference. But he would relate what he himself had said in the conference about the case, and of course, as the year went on, we came to be very understanding of his views, and we could pretty well expect where he was coming out on particular cases. In reporting what others had said, he was not coldly reportorial; he would characterize the views of the other justices, sometimes pungently, but always respectfully.

Fry: What other justices did he seem to get along with?

Richman: He got along with all of them, really. The Chief was a wonderful man in his life and in that role because he did relate so well to other people. He was very close in a social way, you might say, with some of the justices that he disagreed with almost down-the-line on decisions, some of the more conservative justices, like Justice Minton for example, who retired from the Court in the year I was there. He was a man of very different philosophic views and judicial decisions, but

Richman: being two great sports fans, they went often to baseball games and football games together. Philosophically, of course, he was closest to Black and Douglas and later to Brennan, who came on the Court that year.

He had a fair number of intellectual scraps with Justice Frankfurter, and I think they were not close personally, but respected each other nevertheless. The Chief got on warmly with Justice Clark, who's another one who, on most issues, was far apart from him.

IN-COURT FORUMS OF DEBATE

Fry: How were his intellectual scraps carried out? Was this strictly in discussions in conference?

Richman: Well, as we learned in the Chief's reports after conferences, the discussions were carried out in some detail and at great length on important cases, and at times they apparently grew heated. Some of the justices, Frankfurter particularly, could grow quite vehement as debate proceeded. You have to remember, however, that there was a lot of business to get through in an all-day conference, with only a brief break for lunch. Of the petitions for certiorari a large number are clearly without merit, and it's now been published in several places that there is a practice that those cases that are recognized as being without merit are put on a "dead list," or an "X list" and they're not even discussed at conference. Out of say forty or fifty petitions a week, there might be ten that would involve discussion at conference, as well as the cases that were argued during the week, which might be a dozen in number. It's the argued cases that involve the lengthiest and hottest discussions because they are going to be finally decided on the merits. There was vigorous debate in the conference. Justice Frankfurter was known as a very strong debater, as an excellent verbal fencer; he had that talent and sometimes carried it on in what we were told was a rather excited style. The Chief's style, as far as we could tell, was much quieter.

So the first forum of discussion was debate within the conference among the justices themselves. And in the process of deciding an argued case, there would be exchanges of drafts,

Richman: of opinions and dissenting or concurring opinions. Sometimes there were memoranda on the cases that would be printed up just like a draft opinion but not intended to be made a published document. These were just for the purpose of persuasion within the Court. And some of those memoranda got to be pretty pointed in the course of the year.

I think that the Chief also felt, unfairly in my view, that Justice Frankfurter was something of a subverting influence in that he had an attraction for the other justices and for the law clerks (including the Chief's clerks) because of his intellectual brilliance and his long experience. Frankfurter sometimes, in the Chief's view, was asserting more than his one vote's worth of influence by causing either another justice, or a law clerk for another justice, to swing around his point of view.

Fry: You mean in between times he would lobby?

Richman: He did a certain amount of lobbying, going between the chambers, sometimes literally doing so on foot, sometimes through his memos and other contacts. I think that was an exaggerated view of the Chief Justice's. Contact with Justice Frankfurter was a lot of fun and very intellectually sparkling for all of us who had it, but not really subversive to the work we did for the Chief Justice or for another justice.

Fry: What about Warren as Chief? How much of what you might call "leadership" could he exert on other justices for his point of view? I sort of assumed that in cases like Brown v. Board of Education and some of these real milestone cases, he might have done a little persuasive debating himself to try to bring everyone around, especially since Brown v. Board of Education was unanimous.

Richman: Well, I was not there at that time, of course--

Fry: I know, but when you were there, did you see any indications--

Richman: In the general run of the Court's work, I think the Chief asserted leadership in conducting the conference, in moving it along and keeping the debates from just bogging down and not coming to a conclusion.

ASSIGNMENT OF OPINIONS: A CONSENSUS TECHNIQUE

Richman: He did very important leadership work in a little-known process of the Court, which is the assignment of opinions. When cases are being decided five-to-four or six-to-three, it can be very important who writes the majority opinion, and the Chief Justice, if he's on the prevailing side, has the authority to assign that writing job to one of the justices, including himself. That is very important in, you might say, tilting the way the opinion comes out because within a ragged initial majority you might have quite a broad spectrum of views and, depending on who's writing, you might get more or less assent to those views. By appropriately adroit use of that assignment power, you can end up with clearer views coming out of the Court. If you do it badly you'll end up with a lot of decisions, which were characteristic of the time just before Warren became Chief Justice, where you might have four or five or six opinions in a case, each one supported by one or two or three justices, and with the end result that the public and the bar have no clear idea of where the Court is coming out. I shouldn't suggest that there were none of those during his tenure, but generally he handled that function in a way that would produce a good consensus, insofar as it was possible to get it. It didn't result in five-fours turning into nine-nothing decisions, but it resulted in relatively crisp majority opinions.

In terms of the intellectual impact on the flow of decisions, that's very hard to say. You really don't see that in one year. Over the era of the Warren Court, Justice Black generally is credited as being the intellectual leader of the liberal group of justices who produced the majority decisions. But the Chief wrote quite a number of those decisions himself, important decisions, and wrote them in persuasive fashion, at least in a fashion that's persuasive to the reader of the decision. To what extent that had an impact on individual justices along the way, I don't know. In our year, it did not show up strongly that he was swinging other justices to his view. I couldn't say that I saw that process.

Fry: In your year you had this very controversial area in the Smith Act, which was subject to wide publicity, and the majority of the press probably still was in a back-wash from the anti-communism of the McCarthy period. I wonder: How much of this

Fry: seeps through those marble walls? Is it something that is kind of on the minds of the justices when it's a widely publicized issue like that?

Richman: Well I don't think that kind of pressure affected Chief Justice Warren. He had a clear idea of where he wanted to go in terms of the right result, the just result, of a particular case. Interestingly, in working on these cases, I don't think we really viewed them as a bloc. Each case came up with its own legal issues and they weren't--[hesitation] You see the trend is looking back, rather than looking forward or contemporaneously while you're working on it.

I do remember the very end of the year, just before the final rounds of opinions were coming out. Of course, we inside the Court knew what the decisions were going to be on the remaining cases--each year the hardest cases got put off to the end; they take the longest time to work through, and have repeated discussions and the dissents and so forth, and so there is a tendency for a big swatch of the more difficult and controversial cases to come down in June. But they'd been worked on, through the spring particularly, with increasing tempo. And so the month before the end of the session, the justices and the law clerks know what all the decisions are going to be although they haven't been announced yet. And among the law clerks we realized that in every case that year, without exception, in which a Communist was the defendent or involved in a contempt citation or whatever it might have been, that they had won all of those cases. But that was something that we sort of kidded each other about, that it was a uniform success for all the Communists in the country [laughter].

However, in working up to that point on the individual cases, I don't think that connection had been that clear to anyone. It certainly had not been a motivating force in making the decisions. There were some criminal cases that involved a questions of the interpretation of the Smith case; there were other criminal cases that involved technical trial-type issues; the congressional investigation cases had yet another, different set of issues, and so on--although there were First Amendment questions threading through all these cases.

Fry: In Warren's account of working in the conference for Brown v. Board of Education, I kind of got the impression that maybe he had more conferences with the other justices, and over a

Fry: longer period of time, in an effort to hammer out more of a consensus, than previously had been true. Then when I checked this with someone else who presumably knew, in the U.S. attorney general's office, he said that this was not an innovation or change that Warren had made. What's your impression of that?

Richman: I believe (and this is really not based on any inside knowledge, but on a general impression) that in the Vinson court there was much more rigidity of view amongst the justices and quite a bit of bad feeling between several of the justices at that time for various reasons. I suspect that that might have impeded the traditional court process of discussion and accommodation and shaping of opinions, and led to a lot of these very sharply drawn situations where you had quite bitter dissents, or you had four and five opinions in which just two or three justices subscribed to each one. I know that as far as Chief Justice Warren is concerned, in relation to Brown v. Board of Education, he did put in a lot of effort to come to a consensus of view and to have all the justices join in that. In later years, at our dinners, he gave some indication of that, although he never specified who were the laggards or who said what to whom in that connection. That case had been handled in a particularly tight fashion under the Chief's leadership because of its explosive potential. The justices had agreed that year that they would handle that one more closely than they normally do and would not discuss the development of it freely with their law clerks. I know one of the Chief's law clerks worked on the opinion, and I'm sure that some of the other justices had at least one clerk working on it. But generally it was much more tightly held than other decisions, and at least one of the other law clerks of Warren that year has said to me later that he did not know what the decision was going to be until he heard it in open court, and he didn't even know that it was going to be handed down until five minutes before that court session. The Chief said to him--I don't remember if he had called him in or just happened to be standing with him--"You might want to come into the courtroom and hear the decisions this morning." We didn't always go to hear the opinions read because it was very time-consuming. But that was quite a unique situation in the history of the Court, not typical of the way cases were handled.

Fry: I see. Even for the Warren court--throughout the Warren court, it was still different.

Richman: Yes.

BENCH BEHAVIOR

Fry: I wonder how, in open court, the justices got along. I've picked up some anecdotes which might have been based on press stories rather than first-person experience, quick little debates between Warren and Frankfurter. Did any of these ever occur?

Richman: Oh yes. They would occur frequently. That's perhaps a large part of the basis for the distance or even bad feelings between Warren and Frankfurter. In the oral argument the process is fairly free form. The justices traditionally feel free to interrupt counsel with questions, and then sometimes the questions turn into comments. But the tradition is that justices don't speak to each other during the oral argument; the purpose of the oral argument is for counsel to present his views to the Court and for the Court to indicate to counsel what the areas are that they are puzzled about or troubled about and encourage him to persuade them further on it. So it's really a two-way dialogue from bench to podium and back, and not a place for cross-talk between the justices.

However, an adroit [laughing] and experienced justice can put a question that is really an answer to what seems to be the thought expressed, or maybe was very clearly the thought expressed, by another justice a few minutes before. So you would frequently get exchanges--three-way exchanges with the poor counsel in the middle--perhaps Justice Douglas or Justice Black debating him with one set of questions, and Justice Harlan or Justice Frankfurter coming at it from an opposite point of view, hitting him with a conflicting set of questions.

And sometimes--as I say, I was very fond of Justice Frankfurter--but he sometimes would use more than his share of the time, not that there was any predetermined quota of time, but he sometimes would tend to monopolize an argument and keep coming back to the same point when the counsel had either failed to respond satisfactorily to him through a difference of view or sometimes just through inability to grasp the point that Frankfurter was trying to get him to make. The justice would sometimes keep getting back to it, and some of that would be badgering the counsel and some of it would be sniping at other justices, typically Douglas or Black.

Richman: Now the Chief's role in this--the Chief was tremendously courteous to counsel. Many many people have told me what a pleasure it was to appear in the Court before him. If you were merely coming to the bar to move the admission of another lawyer to the bar, he would give you a welcome that made you feel very warm. In the course of argument he was generally very courteous with counsel. There are incidents where he would give government counsel a hard time when they seemed to be persisting in arguing for what he viewed as an unjust result. But that was exceptional. The Frankfurter-Douglas-Black exchanges offended the Chief because they were interfering with the smooth flow of the argument and the courtesy that he thought should be accorded to counsel to give the counsel the chance to make his argument [laughing] instead of taking up all the time with justices arguing with each other, which they could do on Friday at the conference. And the Chief sometimes would then make a snappish remark to cut it off.

I think he also felt this sometimes in the reading of opinions. Some of the justices would do this extemporaneously; they wouldn't just read the opinion that had been delivered. On long opinions you were supposed to read a summary rather than the full opinion. In doing so, sometimes they would get wound up--this was true of both Black and Frankfurter--and would issue orations that became very emotional. It was one thing to do that when you were reciting your dissent, but if you were reciting the Court's opinion, sometimes you would be going beyond what the Court had decided. The Chief didn't care for that at all; he was very sober himself in delivering opinions and would not embellish them. Those were some of his sources of irritation with Frankfurter.

RELATIONS OF WARREN WITH CLERKS

Fry: One thing we don't have in this interview yet is any indication of your own personal relationship with Warren.

Richman: Well, it was a modest one, really. The most fun parts of it were some informal things. We worked across the conference room from the Chief's own office. In later years the law clerks were moved out of there and the Chief turned that room into a reading room where he could relax to do some of his own work away from his desk. But at that time we were there. If he

Richman: wanted to talk to us about a case, usually he would ask his secretary to call us into his office, but occasionally he would just get up and walk across the conference room and come into our room. Particularly this was a pattern on Saturday afternoon, when we would all be at the end of a long week; and what might start as a question about a particular memorandum would very frequently turn into a wide-ranging discussion, and sometimes I think we--as a matter of fact, as the year went on, more and more the Chief would do this as a means of relaxation without even the excuse of a question. He just came in, and we'd talk of whatever was of interest to him--California politics, perhaps some events of the day, or sports, or what have you.

I think we were the ones who started the custom of a Saturday lunch. Actually we initiated it. The three of us told the Chief, by very formal channels through his secretary Mrs. McHugh, that we wanted to take him to lunch on a certain Saturday. We all went off in his limousine to a restaurant down on the waterfront, had a marvelous discussion and got back about 4 p.m., which of course infuriated Mrs. McHugh, who had to stay and wait as he went on to work a couple of hours after that. But he then reciprocated and took us to the University Club a couple of times later in the year. In subsequent years this became a fairly regular ritual of Saturday afternoon: lunch followed by a bull session. It was a very pleasant occasion, because when the Chief did relax a bit he was a very good raconteur; he had had marvelous experiences and it was very good fun to talk with him and hear his views about political matters and public figures and his experiences as Governor, as Attorney General, as District Attorney, going way back to his early career.

Fry: Let's see--this is when Nixon was vice-president. One of the things we're trying to do some detective work on is to get some documentation of what really happened in that '52 campaign between Warren and Nixon before they got to the Republican convention, and to try to find out when the schism occurred between the two figures. Did he bring this up at all with you?

Richman: I'm sure we discussed it. At this remote time, I'm very foggy as to what my perception is of those events from my conversations with the Chief and what's from reading and general knowledge. But I don't think he ever went into it in any great detail with us. I think it's fair to say that in 1956 he was no admirer of Mr. Nixon and that later years did not enlarge his admiration for him. [Laughter]

Fry: Future biographers of Warren won't forgive me if I don't ask you if you had any indication of Warren kind of wrestling with the idea of communism versus anti-communism. When he was District Attorney of Alameda County in California, the impact of Communists as labor organizers and such was the basis of one of the big controversies against Warren at that time by the more radical figures in labor unions. They felt that he was blindly anti-Communist.

Richman: I don't think that--well, let me put it more positively: I did not see in his work that year a line of either pro- or anti-communism. As I mentioned earlier, there were a number of cases, which as you look back on them, all of them were won by the Communists, but in dealing with them they were dealt with as discrete cases or groups of cases. In some instances, as the Watkins and Sweezy* cases, which involved congressional hearings and state legislative hearings, a group of cases obviously had similar issues involved and they were argued together and decided together in related opinions. But in the group of fifteen or so cases for the year that involved Communists there were many different issues and the cases were dealt with on the merits of those issues.

Fry: And this is where you got a lot of criticism from Congress?

Richman: Yes, there was a great deal of storm about the Smith Act cases, and particularly about the congressional investigation cases because they hit home, they hurt, as far as people in Congress were concerned. Of course two years later there was another pair of cases involving congressional and state legislative hearings. Barenblatt** was one of those. There the court retreated somewhat from the decisions in Watkins and Sweezy. Both the cases in our Term and the cases two years later were by split decisions. There was definitely a change of tone and emphasis in the later cases, back toward giving greater sway to the investigator as against protection of rights of the individual called as a witness.

Fry: Now, are there any anecdotes that you might like to--

Richman: Well, it's very hard. It's similar to the final question to a witness before the grand jury: "Is there anything else you want to tell us?" [Laughter]

Fry: Yes, that's right [laughter].

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*Watkins v. U.S. and Sweezy v. New Hampshire.

**Barenblatt v. U.S.

Transcriber: Michelle Guilbeault
Final Typist: Keiko Sugimoto

INDEX -- Martin F. Richman

Black, Hugo, 7, 9, 12-13
Brennan, William J., 12

cases, U.S. Supreme Court:
  Barenblatt v. U.S., 15
  Brown v. Board of Education, 3, 11
  Dennis, 2
  Gayle v. Browder, 3-5
  Mesarosh v. U.S., 2
  Nelson, 2
  Watkins v. U.S. v. New Hampshire, 2, 15
civil rights. See racial segregation
Clark, Thomas, 7
Communist party:
  Supreme Court cases re, 1-2, 9-10, 15
criminal procedure, U.S. Supreme Court cases re, 2-3

Douglas, William O., 7, 12-13

Frankfurter, Felix, 7-8, 12-13

Harlan, John M., 12

McHugh, Margaret, 14
Minton, Sherman, 6-7

Nelson, Steve, 2
Nixon, Richard M., 14

racial segregation, Supreme Court cases re, 3-4
Rankin, Lee, 2
Richman, Martin F.
  as law clerk to Warren, 1, passim

Smith Act, 2, 9-10
Supreme Court, U.S.:
  its work and organization under Warren, 1, passim
  See also cases, U.S. Supreme Court

Warren, Earl:
  as Chief Justice of the Supreme Court, 1, passim

The Bancroft Library University of California/Berkeley
Regional Oral History Office

Earl Warren Oral History Project

Harold Stassen

EISENHOWER, THE 1952 REPUBLICAN CONVENTION, AND EARL WARREN

An Interview Conducted by
Miriam Stein

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TABLE OF CONTENTS -- Harold Stassen

INTERVIEW HISTORY i

I. THE 1952 REPUBLICAN NATIONAL CONVENTION 1
An Overview 1
Stassen and Eisenhower 4
The Minnesota Game Plan 5
The Fair Play Amendment 6
A View from the Right 7
Earl Warren and the California Delegation 9
Minnesota's Decision to Yield to Eisenhower 10

II. ASSOCIATIONS WITH EARL WARREN 14
As Young Republicans and Governors 14
Warren's Appointment to the Supreme Court 18

APPENDIX A: Harold E. Stassen to General Dwight Eisenhower, 12/15/51 23

INDEX 41

INTERVIEW HISTORY

Harold E. Stassen was interviewed by the Earl Warren Era Oral History Project of the Regional Oral History Office of The Bancroft Library in order to record his recollections both of the 1952 Republican national convention, at which both he and Earl Warren were favorite son candidates, and of his early associations with Earl Warren.

Interviewer: Miriam Feingold Stein

Conduct of the Interview: A single hour-long session was held with Mr. Stassen on December 27, 1976. The interview was conducted in the conference room of the law firm of which he is a senior partner, Stassen, Kostos, and Mason, with offices on the 23rd floor of the Girard Trust Building in downtown Philadelphia, Pennsylvania. The conference room windows afforded a sweeping vista of the downtown skyline and the Delaware River.

A large, robust man, Mr. Stassen did not look or sound his seventy years. An outline and several magazine articles and book excerpts had been submitted to him prior to the interview, but he indicated during the interview that he had read only the outline, explaining that through the years he has tended "not to endeavor to read or correct or modify published things because there are so many rumors, reports" which he does not have time to correct or refute. He noted his plans to write his memoirs at some time in the future.

Editing: Editing of the transcribed, taped interview was done by the interviewer. Few corrections or changes were necessary and the manuscript was sent to Mr. Stassen for his review. He carefully read and corrected the manuscript, returning it with the note that he had "kept the changes to a minimum to clarify meaning."

Narrative Account of the Interview: Mr. Stassen begins by reviewing his role in the events surrounding the 1952 Republican national convention. He describes his December 1951 conference with General Eisenhower in Europe about a possible Eisenhower candidacy, and his own offer as an independent candidate to "hold the

ramparts" for Eisenhower in the early stages of the pre-convention campaign. He describes the three-pronged strategy of the Minnesota delegation: to do nothing to hurt the Eisenhower candidacy, to do nothing to forward the Robert Taft candidacy, and to release the Stassen delegates to Eisenhower only when it was clear that their votes would put the candidate over the top. Minnesota's votes, changed to Ike after the first ballot, were in fact responsible for Ike's victory, and Stassen describes the attempts by himself and Warren Burger (head of the Minnesota delegation) to persuade Earl Warren and Bill Knowland, who headed the California delegation, likewise to change California's votes from Warren to Eisenhower. Both Knowland and Warren refused.

In advancing the Eisenhower candidacy, the issue of the "Fair Play" Amendment was crucial. It revolved around which delegates, the pro-Eisenhower or pro-Taft, from three contested southern delegations, would be seated and whether the delegates once seated would be allowed to vote on the remaining contests. Both Warren and Stassen lined up with the pro-Eisenhower camp.

The 1952 convention was not the first association between the California governor and the former Minnesota governor. They had first met, Mr. Stassen explains, at Young Republican functions in the late 1930s and early 1940s, when Earl Warren was California attorney general. During the 1940 campaign, Mr. Stassen relates, on a campaign tour for Wendell Willkie, he urged a gathering of California Republican leaders in Los Angeles to unite behind Earl Warren as the only Republican able to win the governorship. He briefly describes several subsequent contacts with Warren and his family.

On the question of Warren's appointment to the Supreme Court, Mr. Stassen suggests that Herbert Brownell was the most important source for the Warren recommendation, and suggests that Warren's support of the "Fair Play" Amendment "certainly would have been a psychological plus in Eisenhower's view of him." He concludes the interview with a discussion of Eisenhower's theory of federal intervention, particularly with reference to Chief Justice Warren's civil rights decisions.

Miriam Feingold Stein, Interviewer
Regional Oral History Office

4 April 1977
486 The Bancroft Library
University of California at Berkeley

STASSEN, HAROLD EDWARD, lawyer; b. West St. Paul, Minn., Apr. 13, 1907; s. William and Elsie (Mueller) S.; B.A., U. Minn., 1927, LL.B., 1929; Ll D., Hamline U., 1939, U. Pa., 1948, Princeton, 1950; L H.D., Temple U., 1949; m. Esther G. Glewwe, Nov. 14, 1929; children Glen Harold, Kathleen Esther. Admitted to Minn. bar, Sept. 1929, and began practice in South St. Paul; county atty. Dakota County, 1930-38; gov. of Minn., 1938-45; pres. U. Pa., 1948-53; Mut. Security Adminstr., 1953; dir. Fgn. Operations Adminstrn., 1953-55; dep. rep. U.S.A. on UN Disarmament., Commn., 1955; spl. asst. to U.S. Pres., with cabinet rank to direct studies of U.S. and World disarmament, 1955-58; partner Stassen, Kostos and Mason (and predecessor firm), 1958 . Served on staff Admiral W. F. Halsey in South Pacific, 1943-45; apptd. asst. chief of staff, 1944. Awarded Legion of Merit and Bronze Star. Appointed one of U.S. delegates to San Fransisco Conf of United Nations, 1945. Delivered Godkind lectures on Human Rights, Harvard U., 1946. Pres. Minn. Young Republicans and del. to Republican Nat. Conv., 1936; temporary chmn. and keynoter of Republican Nat. Conv., 1940. Chmn. Nat. Governors' Conf., 1940-42, also Council of State Governments, 1940-41. Selected as outstanding young man by Nat. Junior C. of C. 1939. Pres. Internat. Council Religious Edn., 1942-50; v.p. Nat. Council Chs., 1950-52, pres. Div. of Christian Edn., 1952 ; nat. chmn. Brotherhood Week of Nat. Conf. of Christians and Jews, 1946. Pres. Am. Baptist Convention, 1963-64; chmn. of World Law Days, 1965-67. Mem. Sigma Alpha Epsilon, Delta Sigma Rho, Gamma Eta Gamma. Grey Friars, Republican. Baptist. Mason (Shriner). Author: Where I Stand, 1947. Home: Penn Towers Philadelphia PA 19103 Office: 2300 Two Girara Plaza Philadelphia PA 19102

I THE 1952 REPUBLICAN NATIONAL CONVENTION

[Date of Interview: 27 December 1976]

[Tape 1, side 1]

An Overview

Stein: Why don't we just start at the beginning and talk about the '52 Republican convention?

Stassen: Right. I'm perfectly willing to go into this oral history with you. I would give you my best recollections, at the same time emphasizing that anyone's recollection, especially after these years, has imperfections. It tends to be colored by subsequent events. I myself recognize those limitations on what my recollections might be. With that caveat I will go into it with you.

You want to start with the '52 situation. I should first, perhaps, give you the perspective that we had been active in the 1948 convention; and then had decided that in the total situation after the Dewey loss to Truman that if we could have the nomination of Dwight Eisenhower in 1952, he would be electable, and would conduct an administration that would be closer to our views on both foreign and domestic policy than any of the others who were under consideration.

Therefore in 1951, I think in the month of July, we had a general conference of our supporters at Ambassador [Amos] Peaslee's home in New Jersey.

Stein: If I can interrupt just a minute, when you say "we" and "our", who are you referring to?

Stassen: My key supporters and myself.

Stein: That would have been Warren Burger--

Stassen: There were perhaps a hundred men and women around the country, and Ambassador Peaslee was one of those key supporters in '48 and again in '52.

We decided in the summer of '51 at this meeting in New Jersey that our number one objective should be to nominate and elect Dwight Eisenhower as president. We also considered that if he remained (at least as far as anyone regularly knew) unavailable on through to the approach to the convention that quite likely Senator [Robert] Taft would be nominated. We believed that Taft would be defeated in November by the Democrats. Further, Taft's views on foreign and domestic policy were quite different than mine.

I've always had the view that the Republican party, and both parties, should have a wide range of viewpoints within them, that it should be a broad spectrum of views. That's the best functioning of the two party system in our country. I had tremendous respect for Senator Taft, but I had differed with him on many issues through the years.

So with that analysis I went to see General Eisenhower at SHAPE [Supreme Headquarters Allied Powers, Europe] in Paris in December. I had an extensive talk with him. I tried to analyze what would likely unfold in the next six months in his thinking and actions, then wrote him a handwritten letter from the Hotel Crillon giving my analysis and the fact that I would be ready to back him if it developed we could nominate him. That handwritten letter, by the way, is in the Eisenhower Library in Abilene, [Kansas].*

That's the sort of a base, a true and correct statement of policy. But with this background we were then active in '52, particularly starting out in the period when it was not known whether Eisenhower would come back, would enter into any primaries. We in effect checked Bob Taft's thrust of his very strong campaign, and raised the issues of foreign and domestic policy versus Bob Taft's kind of thinking.

In this process, perhaps one of the most relevant facts from your standpoint is we also maintained contact with the Earl Warren campaign and with Earl Warren. He entered the Wisconsin primary

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*See Appendix A for copy of this letter

Stassen: and he had the backing at that time of the Eisenhower forces in Wisconsin. He won a good result in Wisconsin. He also had a good standing with labor. But as we came toward the convention it was apparent to us that the issue of these Texas and other delegations was going to be very crucial so I put one of my ablest supporters on the Credentials Committee because that's where these issues were going to be. That individual was Warren Burger, who of course in later years became Chief Justice of the Supreme Court.

He was one of my managers in 1952 and had been a supporter back in earlier years in Minnesota. He took a strong position in line with my position in the Credentials Committee, but as an independent. In other words, one of the reasons we maintained our independence was that we could make decisions ourselves in our own group of supporters. Warren Burger was a strong factor in the Credentials Committee and in the contests over those southern delegations. When those delegations for Eisenhower were seated, then it was our analysis that it was clear that the California and Stassen delegations together could clinch Eisenhower's nomination.

At this stage I personally conferred with Earl Warren, and I believe Warren Burger personally conferred with Bill Knowland [head of the Warren delegation], with the proposal that Earl Warren and I would join together right then for Eisenhower and that that would cinch it, complete it.

Earl Warren said that he did not conclude that he would do that at that time. (This was between the time of the southern delegation decisions and the first ballot.) We kept contact with all the camps and I knew of course that Bill Knowland did too. Knowland was particularly very close to the Taft camp. In any event, we could not persuade Earl Warren and Bill Knowland to join us in coming out for Eisenhower.

Therefore we held back while we watched for the count. We had the policy that if the Stassen delegation could clinch a first ballot vote we would do it, but we were going to watch the count to make sure that we did it because if it wasn't accomplished than no one could tell just what would happen and we would not withdraw from the picture.

Then of course as the first ballot went through and my floor organization watched the count, it reached the point where they knew that by swinging over the remaining Stassen delegates that we would clinch the first ballot vote. They saw that it could be

Stassen: done! They did it! In other words, that was in accordance with the policy all the way on back. Then others swung over. Those are the highlights of that aspect.

The official convention record shows that the Stassen delegates immediately switched at the end of the first roll call, before it was tabulated and nominated Eisenhower.

Stassen and Eisenhower

Stein: If I could back up to the beginning of that story, when you conferred with Eisenhower in Paris, what was the essence of your discussion?

Stassen: The essence was to discuss with him his viewpoints about policy and about the future of the situation vis-a-vis Russia, the kind of foreign policy our country ought to follow, what his views were about the political scene -- sort of an exchange of viewpoints there -- his view of what was going to happen in NATO and how he was organizing that command. It was really on the basis that I did not expect him to tell me anything in a confidential way, but I wanted to try to get an in-depth understanding of his views and attitudes.

Then I wrote this letter to him as to my analysis: that he could win, but that if he waited until the convention and nothing special was done that Bob Taft would be nominated. In other words, I was saying that there was a need and that I was going to, in effect, hold the ramparts in the early stages as an independent candidate.

Stein: I see. So even from the beginning you saw yourself as more or less a stand-in for Eisenhower.

Stassen: Yes, but I never yielded to anyone the authority to tell me what to do. But that was our policy, that the best thing would be to nominate Eisenhower. This is all kind of spelled out in this letter.

I think if you write to Abilene to the Eisenhower Library, you could get a copy of that December 1951 letter.

Stein: There were press reports before the convention that you had cooled somewhat on Eisenhower because of his failure to take a

Stein: firm stand on some domestic issues like fair employment. Is that true?

Stassen: No, that wouldn't be true. I had always maintained an independent position, as I say right up to the time that the delegates clinched his nomination, so that there were issues on which I took perhaps more of a progressive or a pioneering stand than he did. I did differ some with him at times, but that did not mean a cooling toward the final resolve.

[Pause]

The Minnesota Game Plan

Stein: Other Minnesota delegates have described a game plan of how the Minnesota delegation would proceed at the convention. The plan was three-pronged: you would do nothing to hurt the Eisenhower candidacy --

Stassen: Right.

Stein: You would do nothing to forward the Taft candidacy, and you would only release delegates to Eisenhower when it was clear that the Minnesota delegates would put him over the top.

Stassen: That's right.

Stein: Is that an accurate description?

Stassen: That's right. That's accurate.

Stein: From what I've read, it sounds like a number of the Minnesota delegates were newcomers to politics and were somewhat over-enthusiastic.

Stassen: Well you see, of course, there was considerable support for General Eisenhower in the Minnesota delegation even though they were elected as my delegates. I did not discourage any of their enthusiasm for Eisenhower, except that I had asked them to remain as a group and under the chairmanship of Warren Burger and Senator [Edward] Thye.

Some of them broke loose. That is they jumped over to Eisenhower beforehand, which was somewhat disappointing to me

Stassen: that some of those elected as my delegates did not follow through to give me the first ballot vote.

Later on the general feeling was that those who did wait and had the position that they clinched the nomination were, in effect, in the preferable position. It proved out.

But the natural thing happens that some get anxious to jump over earlier, and this and that. There was that splitting of the delegation before the first roll call. Some jumped over ahead of time.

Stein: I see, although the majority of the delegation stayed with you.

Stassen: Yes, and the leaders did. Warren Burger and Senator Ed Thye were really the key leaders of the delegation. They are the ones then who swung the remaining votes to clinch the nomination.

The Fair Play Amendment

Stein: I also want to back up, before I ask you about that particular vote, to the Fair Play Amendment which seems, from the Warren perspective, to be particularly important.

Stassen: Right.

Stein: Were you involved at all in the formulation of the amendment or in the original talks about it?

Stassen: Yes, especially through Warren Burger and with Herb Brownell. In other words, we agreed that they had to make an issue out of those Texas and Georgia delegations.

Stein: And Louisiana.

Stassen: Yes. Otherwise, if those delegations -- you see, the majority, as you probably well know, of the Republican National Committee was for Senator Taft. If you let those decisions stand then Senator Taft would have been nominated. As I said, our appraisal at that time was that he would quite certainly lose in November and furthermore that he represented policies that, while we respected him, we differed with him on both foreign and domestic matters.

Stein: Was there any disagreement on the Minnesota delegation about the Fair Play Amendment?

Stassen: I do not remember any. I think that was quite unanimous. It was talked through. I do not remember any disagreement.

Particularly, there was agreement that Warren Burger would be the Credentials Committee member. He was put on the Credentials Committee because that was appraised to be one of the most important points in the whole convention. The decision to back the Fair Play approach carried with it also the decision to put Warren Burger on that committee.

Stein: He ran for chairman of the committee, didn't he? Was that also part of the strategy?

Stassen: That then, in effect, was the Eisenhower forces decision. They could not get the chairmanship themselves, but Burger had kept the status of one who was not in either the Eisenhower or Taft camps.

In fact in the midst of that we sent a telegram to all the other delegations in support of the Fair Play Amendment analyzing why we were for it. It either went out in my name or Burger's name. There is a message "to all other delegations" on that.

Stein: What sort of response did you get to that?

Stassen: It's in the area of -- there are many things happening on both sides of issues and you cannot really appraise it. Naturally when the Fair Play Amendment finally carried we were pleased.

A View from the Right

Stein: In reading about this period I looked at some things written by Phyllis Schlafly to get the point of view of the far right.

Stassen: Oh, really.

Stein: She presents the thesis that 1952, and '48 also, represented the success of what she called "kingmakers" in the Republican party, to take over the Republican party and keep what she considered the true Republicans, of whom Taft was the leader, from becoming the candidate. These kingmakers that she named were Thomas Lamont

Stein: and Thomas Cochran, of J.P. Morgan; Alfred P. Sloan of General Motors; and the Rockefellers of Chase National Bank.

Stassen: There was always that viewpoint among some of the Taft supporters and the conservative supporters, real extreme conservatives, that they could win if it were not for the, what they called, Eastern Establishment.

Of course it was our viewpoint that we represented in fact the predominant rank and file of the Republican party.

I, of course, have been independent of influence by anybody like that or anyone else all through the years, really acting under my convictions of what direction the country's policies and the party's policies ought to follow.

Stein: Part of her thesis was that these kingmakers had put you on ice, so to speak, at the University of Pennsylvania, so that they would have you in the wings if they needed you, if Eisenhower didn't work out as a nominee. Would that be an accurate description of how you got to the university?

Stassen: No. After the war, after the '48 convention, I was deciding what to do between various invitations to take positions in Baltimore, Philadelphia, New York and Boston. I decided on the University of Pennsylvania.

I knew many of the trustees of the University of Pennsylvania and the '48 convention had been here in Philadelphia. They came out to see me before the '48 election. I accepted the presidency of the University of Pennsylvania in September of 1948, before the election. At that time it was anticipated that Governor Dewey would win, that he would be president.

I decided to put in some years -- I've always been very interested in young people and in education. I decided of the various opportunities after the war that I'd put in some years as president of the University of Pennsylvania. I was very active in those years, '48 to '53, in education.

Stein: So Mr. Lamont and Mr. Cochran and these others had nothing to do with your becoming --

Stassen: No. As a matter of fact I don't think any of those men that I've ever observed had any influence over the forty trustees of the University of Pennsylvania.

Stassen: I think one thing that they miss in their kind of conclusions is that I went to the University of Pennsylvania before the '48 election. It wasn't between '48 and '52, it was in September '48 that I took the presidency of the University of Pennsylvania.

Earl Warren and the California Delegation

Stein: Getting back to the Eisenhower nomination then, you mentioned earlier that you conferred with Earl Warren about the possibility of Minnesota and California joining together in swinging their votes to Eisenhower. What was Warren's reaction?

Stassen: He did not wish to do it. I didn't really probe deeply as to why. I was aware that Bill Knowland had told Warren Burger that he did not want to do it. We had some of the kind of rumors that if Taft was nominated that Bill Knowland was going to be his vice presidential candidate. You would have no way of knowing whether that in fact was a program, or in fact would have happened.

We did know that on the California delegation there were varying attitudes, but we felt certain that there would be twenty or thirty California delegates as a minimum that would have come for Eisenhower. With ours, we knew that would be all it would take. We had quite an accurate count of where it stood.

We could not be sure in advance of the first ballot that our delegates would be enough, but we were positive that our delegates and Earl Warren's delegates, who would swing to Eisenhower if Earl asked them to, would be enough. That led to Warren Burger's talks with Bill Knowland and my talk, personally, with Earl Warren.

Stein: Was that your only contact with Warren about that issue or with the California delegation?

Stassen: No. There had been earlier talks between Earl Warren and myself on the Fair Play Amendment in which I was urging him and other leaders I knew in the California delegation to support the Fair Play Amendment. Warren Burger was doing the same thing.

In fact the member of the Credentials Committee from California -- I can't think of his name right now -- there were talks with them as well as with others from around the country, trying to build up support for the Fair Play Amendment.

Stein: Were these talks at the convention or before the convention?

Stassen: At the convention, beginning the day before, or two days before and following on through.

Stein: Was it your feeling, then, that Warren was undecided at that point about his attitude about the Fair Play Amendment?

Stassen: Well, as we first started to talk to him and to other members of the California delegation, before they had declared on the Fair Play Amendment -- (You never know for any certainty, of course, in an issue like this whether you helped to persuade an individual or whether you were just coincidental to what happened.)

Stein: That's been one of the crucial things that we've been trying to uncover, at exactly what point Warren came aboard the Fair Play bandwagon.

Stassen: Well, if he's still living, you ought to try to interview the member of the Credentials Committee from California.

Stein: The only name I can think of is Gordon Richmond, but he was in the '48 convention.

Stassen: No, that does not sound like the name.

Stein: That would be a good person to check out.

Stassen: Yes. The convention records will show who was on that committee.

Stein: That should be no problem to find that out.

Stassen: He would be very interesting to interview.

Minnesota's Decision to Yield to Eisenhower

Stein: You mentioned earlier the decision to yield the delegates to Eisenhower. There've been somewhat conflicting descriptions of the caucus of the Minnesota delegation where that was decided. The press reported it as a very dramatic, tear-jerking event where Senator Thye and Elizabeth Heffelfinger were arguing vociferously for Eisenhower and it was pictured that they were having almost to wrestle the delegates away from you, whereas others have described it as a very peaceful meeting.

Stassen: Some emotion was there as to them breaking in advance. This was the issue. There was never any question of all the Minnesota delegation and all of the Stassen delegates joining in nominating Eisenhower when it was clear he could be nominated. The issue was whether they would break ahead of time.

Some of them insisted that they wanted to break ahead of time. Some of them wanted to be released ahead of time. I declined to release them ahead of time, but the policy was very clear always. There was not only no emotion about joining for Eisenhower, but it was the plan for over a year to do that.

What the issue was was them not first giving me the first ballot vote which the people had elected them to do. That was where the issue came in.

Senator Thye was on the side of them remaining until it was appraised that they could nominate Eisenhower. There was no difference among the leaders, but there was some of those that --

Elizabeth Heffelfinger was a very enthusiastic and emotional person. She and some of the others jumped ahead of time. That did create some emotion, some tensions in the delegation. But it was <u>that</u> issue.

It was not a question of supporting Eisenhower, but whether they jumped to support him beforehand.

Stein: Was there any difficulty in actually carrying out this plan, and being recognized by the chairman? I imagine that the convention at that point was fairly noisy and chaotic.

Stassen: It was arranged with Chairman [Joseph] Martin either before the roll call began or at that point -- they had arranged that Minnesota wanted to be recognized at the end of the first ballot. Senator Thye and Warren Burger and the others -- I think they had somebody up there on the platform as well as somebody at the delegation asking for the floor to be sure. So they were immediately recognized.

There is a procedural point that any delegation is entitled to be recognized as the last state is called and before the announcement of that result.

Stein: I've read that Bill Knowland from the California delegation attempted to be recognized by Chairman Martin, but Martin refused to recognize him and instead called the Minnesota delegation.

Stein: Do you know anything about that?

Stassen: I've never heard that. I don't know one way or the other. I believe that there was a series of pictures in Life magazine of these moments. The Life magazine report on that convention, as I recall, will show the picture as the roll call is completed, the picture as the Minnesota delegation arose to change their vote, and then a picture of the more or less pandemonium that followed immediately as Eisenhower was nominated.

I don't remember whether California was the next to swing over because then they began to make it unanimous.

Stein: California did not swing over immediately.

Stassen: It became, I think, finally a unanimous thing.

Stein: [Looks at Newsweek article, 7/21/52] I was just looking over this report in Newsweek which shows what they say is the first and last ballot. California at this point had not changed.

Stassen: I see. [end side 1, tape 1]

[begin tape 1, side 2]

Stassen: [Looks at Newsweek article, 7/21/52] Yes, Michigan did not get changed over either.

Stein: That's what's always confused me about that Knowland story because everything else I've read has always indicated that the California delegation was sticking with Warren.

[Pause]

Stassen: I do not remember any such thing because also I do know that in talking to Earl Warren, personally, and to Bill Knowland ahead of time, they would not give any commitment of what they would do. That is they would not agree to announce ahead of time.

They did not disagree with our analysis, that the two of us announcing for Eisenhower would clinch it. We were not able to convince them to do it.

So I don't know just what that part of the story would be, but I doubt they were ready to switch at that time.

Stein: Is there anything more we should say about the '52 Republican convention?

Stassen: No, not unless you had some other questions.

II ASSOCIATIONS WITH EARL WARREN

As Young Republicans and Governors

Stassen: You asked about my earlier associations with Earl Warren. I had some contact with him when he was attorney general and I was governor, and when we were both Young Republicans way back in the '36 to '40 period, very early there.

I was a Young Republican delegate to the 1936 convention. Then I was actively speaking around the country and in '38 was elected governor. Then in 1940 I was active in the [Wendell] Willkie convention, the Willkie nomination. I was floor manager for Wendell Willkie and keynoter in 1940.

In that campaign -- this is an anecdote that could be checked out; this is my recollection -- I went out to speak in Southern California in the 1940 Willkie final election campaign. Before the meeting (I believe it was in the Shrine Auditorium in Los Angeles if there is such an auditorium) they had a dinner of leaders for the Willkie campaign, the Republican campaign by that time. He was the nominee.

My recollection is that I knew at the time that there'd been a lot of factionalism in California Republican politics. There were definite organizations and factions -- and of course Democratic governors.

During the dinner a discussion came up about the '42 California governorship campaign. I expressed the opinion that as far as my limited knowledge of California politics, there was one Republican who I thought could carry the state, and only one. That was Earl Warren, the attorney general.

Various of the individuals at the dinner said, "He won't run."

Stassen: I said, "Presumbaly he says he won't run because you go at him factionally. Nobody is just going to go into that kind of a situation. But I wager that if your major factions (and they were all sitting around the table) would get together and say you'd back Earl Warren, I'll bet he'd run and I bet he'd win." I bore down pretty hard on that.

In those years particularly I was exercising that kind of judgement and emphasis in different parts of the country. I was very active and had contacts all over.

I took a very strong position in that dinner that they should nominate Earl Warren and I believed he'd win. I said, "He won't follow policies exactly that anyone agrees to, but he'd certainly be better than having another Democratic governor. You'll all have a better chance to express your views." And so on.

Then when Earl was elected governor we had contacts. I was chairman of the governors' conference just as the war was opening up. Earl Warren was at those governors' conferences and we had contacts. When I was president of the University of Pennsylvania later Earl came up and we gave him an honorary degree and he stayed at our home with some of the family in Philadelphia. We had quite a lot of contacts through the years.

Stein: That's an interesting anecdote about urging the Republicans to back him because in 1940 I think he was largely still content as attorney general. What propelled him to run for governor were the growing controversies that he was having with the Democratic governor. He finally realized that he couldn't do what he wanted to do as long as that man was in office.

Stassen: Yes. It would be interesting, looking back, whether the newspapers would show that in 1940, between August and November, did I make a speech out there (my recollection is that I did), was there a dinner beforehand, were the different factions at that dinner, who was there, and are any of them still living, and do they have any recollection of that.

Stein: Do you remember who any of them were?

Stassen: No, I don't, really. My recollection is that we were trying to get the unity for the Willkie campaign in November, and that we were trying in that meeting to bring all the factions together. I was also talking about how important it was that they all be united for Willkie in the November election because that was the real chance to carry the country and build the Republican party

Stassen: and so on. That's my recollection of that aspect of it.

Of course during the time we were both governors there were contacts about issues of state and local government, state-federal relations and things like that. I think the files of the National Council of Governors would give some indication of committees functioning and things of that kind.

Stein: Did you play any role in the 1948 campaign when Warren ran as vice-president?

Stassen: Yes. My name had been presented in '48.

Stein: That's right.

Stassen: I had won some primaries and so I was very active in '48. Then I made some speeches in '48 and backed the Dewey-Warren ticket.

I had tried to persuade Governor Dewey to campaign more actively in an affirmative way, like when Truman called the special session of Congress. I urged him to take leadership of the Republican party, take a position for a minimum wage (because it had been too low and this was one of the issues). I said, "The minimum wage is far too low. Take some kind of a position." (I think it was then forty cents.) Governor Dewey showed me a Roper poll, that he was so far ahead. He didn't want to take any stance and prejudice that lead. He finally took a position: the minimum wage should be raised. Period.

Then the Democrats said, "What does he mean? Forty-two and a half cents? Forty-five cents?" There was a controversy in the Republican party whether or not it ought to be sixty-five cents or seventy-five cents. If he'd said seventy, or somewhere in there, but --

On the different issues he would not take a strong, firm conclusion, likewise on foreign policy.

Then Truman did that dramatic drive and finally tipped it over.

Stein: I noticed also that you were a prosecuting attorney in your very early years.

Stassen: Yes. I was district attorney for eight years before I was elected governor.

Stein: Did you have any contact with Warren about that? He was a DA

Stein: in the same period.

Stassen: Not that I recall. My recollection is more his Young Republican national activity to some extent, but more particularly when I was governor beginning in November, '38, January, '39 and he was attorney general.

It could be too, though I do not specifically recall it, that we might have been speaking on some of the same national meetings, like the New York Herald Tribune Forum. I spoke there a couple of times as a Young Republican governor. He might have spoken as an attorney general. Or there might have been some of the conferences in Washington about federal-state relations in which we might have come together.

In any event, I know that when we came to the 1940 Willkie convention and campaign I had a high regard for him. When I went to California I was recommending him, not from any talk with him that I was going to recommend him. In fact, I did not even know whether they could persuade him to run for governor. But I know that I bore down on them that the only way they could get him to run would be to show that there was solid Republican backing.

There was also an issue then about running on both tickets in those days.

Stein: That's right. Cross-filing.

Stassen: I defended him doing it. I said, "This is the California law and you've got to recognize that."

You see, I myself had -- I had broken through and gotten elected as a Republican in Minnesota not on that kind of a law, but by establishing a committee which was called the All-Party Stassen Supporters. Because the Republican party alone -- this comes in the wake of the 1936 election in which [Alf] Landon carried Maine and Vermont, period. You really had to reach out to broaden the party support.

Warren did it in his way in California. I did it in my way in Minnesota. So I had an understanding of that.

Stein: What had you based your assessment of Warren on when you were recommending him as a good gubernatorial candidate? His stand on issues?

Stassen: Yes. The fact that I was convinced of his deep sincerity from

Stassen: every contact I had with him, that he had what is broadly described as progressive views. He had integrity of position. He had an appeal to the people. I liked him. I liked his stand, in the spectrum of the Republican party.

Now at some stage I had been a guest in the Warren home in Sacramento. That would have had to be after '42. It might have been while I was drawing up the United Nations Charter. He was governor then, in 1945.

I was appointed by President Roosevelt as one of the Republicans to draw up the United Nations Charter and we were out there in San Francisco, Mrs. Stassen and I, for about ten to twelve weeks.

My recollection now is that Governor and Mrs. Warren invited us to come up to Sacramento to dinner, and, I believe, stay overnight, so that we had that contact at that time. That would have been in 1945.

Stein: In that rambling Governor's Mansion, that wonderful old Victorian building?

Stassen: Yes, yes.

Warren's Appointment to the Supreme Court

Stein: I guess what's really in back of this interview is the question that we've been asking a lot of people, which is how Eisenhower came to appoint Warren as Chief Justice of the United States. There are some people, Justice William Douglas among them, who suggest very, very political motives and claim that Nixon had a role in it. Then there are other people who suggest that it was because of Warren's role in the 1952 convention -- that Warren at some point did something to help Eisenhower's candidacy. I wondered if you had any thoughts on that question.

Stassen: My thought is, and it's just a thought, that there had been different pressures as to who to appoint, but I think that Herb Brownell was probably the most important source of a recommendation. And I think Herb Brownell went out to talk to Earl Warren about it.

Stein: That's right.

Stassen: Like in most of these things, many different individuals have many different motivations for what they urge.

Eisenhower did have a high regard for the Supreme Court. Eisenhower didn't necessarily agree with every one of Earl Warren's decisions. Quite the contrary.

In fact, I think you'd probably say that Earl Warren turned out to be somewhat even more liberal than a lot of them had estimated that he would be. I think that would be a fair appraisal as he went along. (Although I think people who knew his earliest records would recognize those liberal trends there.)

Eisenhower wanted to make an appointment that would be generally regarded favorably in the country. Earl Warren was favorably regarded. He wanted to appoint a recognized Republican, but one who would not be reactionary in his approach.

But I believe that in these kind of matters Herbert Brownell's recommendations would have been one of the most important things.

I think quite a few of the Bar Association's leaders recommended him, as I remember it.

[Pause]

I would think that his support of the Fair Play Amendment certainly would have been a psychological plus in Eisenhower's view of him. And his record of integrity would have been a plus.

I recognize too that historians and the commentators of that time have various appraisals of Eisenhower. But I think Eisenhower was one of the most deeply devoted men to the real objectives of the country of any that have been in public office. His motivations in this and other appointments I think would have been basically a conclusion that of the alternatives available to him that this would be best for the country. I think it became just as basic as that.

He did <u>not</u> disagree with Earl Warren on the great '54 decisions. He was <u>for</u> that. I know that. Now there were a lot of internal debates about how far to go with troops and things of that kind, but you know the whole Little Rock story was backing up that 1954 Supreme Court concept, and backing it up decisively.

Eisenhower had the view that if you had to step in, step in so clearly and so strong that the people will not attempt to oppose

Stassen: it and by opposing, create a tragedy. Sort of the difference between the great strength with which he went into Little Rock, versus some of the later periods when they sent a few marshals down into Alabama or somewhere and had killings and tragedy, you see. This was an Eisenhower principle. If you have to move, and use the authority of the federal government, move so clearly, so strongly, so decisively that it will be accepted without an attempt to challenge it on the scene.

Stein: Were these concepts you had discussed with Eisenhower?

Stassen: Yes. You see, I was in the Cabinet and the National Security Council and the Operations Coordinating Board of the Eisenhower administration, so I was in the middle of all these things.

Stein: I thought you had been mostly concerned with foreign affairs.

Stassen: No. I was very concerned with foreign affairs, but I was on the Cabinet throughout that period and I was on the National Security Council and I was on the Operations Coordinating Board and the National Economic Council. My office was in the part of that executive group.

[Pause]

Stein: Did you discuss any of your work on the Cabinet then with the Eisenhower Library?*

Stassen: Yes.

Stein: That's a very important story.

Stassen: Yes. Also young David Eisenhower, the grandson, is writing a book, apparently. He came over to ask questions about it, on his grandfather's policies.

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*Mr. Stassen discussed his association with Eisenhower prior to the 1952 campaign and in the early part of the Eisenhower Administration in a tape-recorded interview for the Eisenhower Library. See Stassen, Harold E., transcript of a tape-recorded interview conducted by Ed Edwin, Columbia University, for the Dwight D. Eisenhower Oral History Project, in Dwight D. Eisenhower Library, Abilene, Kansas (New York, 1970), 68pp. Closed until 1985.

Stein: That will be interesting to read when it comes out.

Did you have a chance at all to look at any of the xeroxed material I sent?*

Stassen: Not really, no. I looked at your letter and the outline, but the other articles and things, no.

I should also say that I have tended through the years not to endeavor to read or correct or modify published things because there are so many rumors, reports -- and I just simply don't take up my time with them, but think about the future -- which is still my main concern -- the future of the country, and where we go, and what we do, in the world matters.

Stein: Maybe I should slip in a little question now? What do you think the future of the Republican party is?

Stassen: It needs a lot of rebuilding. A lot of it.

Stein: What do you think of Reagan's proposal to change the name?

Stassen: I am against it. No.

That came up very strong in 1936. "Change the name," some cried out! You can change the meaning. A party label at various times in history will get a different image to the people and will function.

But I am in favor of using the two great vehicles, and in each one have a wide range of viewpoint, in each one let the process take place by which you decide issues.

Frequently, the great issues or the direction in which we must move are debated through in both parties and both parties move on these great issues. Then conclusions are developed as clear policy of the country.

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*Mr. Stassen had been sent copies of: Newsweek, 7/14/52, pp.21-23; Newsweek, 7/21/52, pp.21-31; and the chapter on Minnesota from Paul T. David et al, editors, Presidential Nominating Politics in 1952: The Middle West (Baltimore, 1954), pp.158-180.

Stein: I wish we had more time to explore this question, but I know you have a very busy schedule. Thank you so much for taking time to tape-record for the Warren Project. [end side 2, tape 1]

Transcriber: Gretchen Wolfe
Final Typist: Ann Enkoji

APPENDIX A: Harold E. Stassen to General Dwight Eisenhower, 12/15/51
(The original of this letter is on deposit in the Stassen Papers at the Dwight D. Eisenhower Library, Abilene, Kansas.)

HOTEL DE CRILLON
R C SEINE 27.162

Paris, le Dec 15 1951
PLACE DE LA CONCORDE
Ad. Télég. "CRILONOTEL"

Dear General:—

It was grand to see you! Your remarkable accomplishment in one year in Western Europe is thrilling to note and an inspiration to observe.

I am writing this forthright letter to you because I believe it is desirable that you have this specific information as 1952 begins. Of course no reply is expected nor appropriate.

HOTEL DE CRILLON
R C SEINE 27162
PLACE DE LA CONCORDE
Ad. Télég. "CRILONOTEL"

Paris, le ..... 19 ....

First of all, it is my intention upon my return to America to state to the press that I consider from my personal observations before and now that you have performed a near-miracle in the one year progress you have made in developing the morale and the defense of Western Europe. I will say further that the American people owe you another debt of gratitude for this additional chapter in your

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HOTEL DE CRILLON
R.C. SEINE 27169
Paris, le ..... 19....
PLACE DE LA CONCORDE
Ad. Téleg.: " CRILONOTEL "

unparalelled career of service.

I will decline to answer all questions about our discussions on the grounds that it was a personal visit, similar to others I have had in times past with other leading personalities such as Churchill, MacArthur, Attlee, Hoover, and that I have never felt that it was right to report such personal discussions.

In response to their questions of my own intent I will say

4

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R C SEINE 27162

Paris, le ..... 19 .....
PLACE DE LA CONCORDE
Ad. Teleg: "CRILONOTEL"

that I will confer with my key friends and announce my decision before the 1st of the year.

In meeting with my friends and in meeting with Tom Dewey and Cabot Lodge or others of their group, I will likewise state that I do not consider that I should attempt to report to them on our personal conversations.

But I will tell them on a confidential basis my analysis of the total situation and my own

HOTEL DE CRILLON
R C SEINE 27162

5

Paris, le ..... 19....

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intended course of action.

I will say ~~that~~ I am convinced, from everything I have noted for years, ~~that~~ you will not become a "seeker" after the Republican nomination for the Presidency, ~~that~~ you will not enter personally into a prolonged contest ~~with~~ versus Taft for that nomination, ~~that~~ to do so would be contrary to the very quality of service to country without seeking which people have much admired in you, that the further question of

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whether or not you would respond to an authoritative draft to be the nominee could only be conclusively answered if and when the circumstances of such an authoritative or agreed draft took place.

I will also say to them that in my judgment, based on my overall observations, you would not lay aside your present large responsibility of leadership unless there was a direct and clear call to greater responsibility or unless the present

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European-American task had been discharged in its major aspects, that under the present circumstances in Europe and the present adverse attitude of Taft, neither of these two conditions can be anticipated within the next ninety days and the situation thereafter is problematical.

I will say further that in my judgment Taft is making headway as the sole affirmative "seeking" candidate, and that unless he is met and countered promptly

8

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Paris, le ..... 19....
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be quite likely will be the Republican nominee, that in my judgment he would have the poorest chance of beating President Truman, that I feel that Truman's defeat is important for the sake of the country, and that while I would support Taft versus Truman if nominated as the better of the two, I fear that he (Taft) would not be a good president, especially not in foreign policy matters.

I will tell them that

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under this estimate of the situation I will give my approval to my friends entering my candidacy in the various states and I will actively campaign on the basis of the constructive measures of foreign and domestic policy in which I sincerely believe.

I will make it clear that in beginning such a campaign it will be an all out campaign, that I do not believe it could be effective on any other basis, that I

10

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have not made and will not make any commitment to withdraw from the race under any given circumstances, that I will not pose as a standard bearer for anyone else, nor permit myself to be labelled as a stalking horse, but will campaign on my own feet for my own beliefs, and that this in my judgment is the right and wise course for all concerned.

Presumably this decision of mine will result in a head-on clash with Taft in Wisconsin,

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Paris, le ..... 19 ...
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and perhaps also in Illinois and Ohio and other states, as I am convinced he cannot be permitted to be completely secure in his best territory while he concentrates on adding new territory. Thus I will have to try to keep him partially busy in his territory while I work hard to defeat him in the key battlegrounds such as the Wisconsin Aspirant 1st primary. He may also enter Minnesota as he has won over the National

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Committeeman, Roy Dunn, of my home state.

In that event the Minnesota primary battle on March 18th will also be important.

I will say to them that this course of action by me and by my supporters can have one of three major alternative results.

1. It may be found that my strength is inadequate to overcome Taft's lead and he may move on through to the nomination with

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bandwagon psychology.

2. I may dent his support and slow him down and develop a preconvention stalemate along with Earl Warren, and native sons, and with support reserved for you in New York, Kansas and other states, in which event an overwhelming draft of you, or someone else who had not been in the heat of the struggle may take place.

If this alternative develops and you then decide to

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accept the draft I am confident that you will be elected and will be a superb president and I will be very happy with this result.

3. I may decisively defeat Taft in the key states and move on to build sufficient strength for my own nomination.

As these events unfold I will maintain a liason to Tom Dewey and Cabot Lodge. I will also be available at any time

15

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to personally discuss any phase of the developments with you if your circumstances change so that you wish to talk again with me.

I will at all times make clear my high regard for you and for your accomplishment for the country and also my own freedom from any private commitments.

In view of the peculiarities of the laws of various states, some of which do not require the consent of the proposed nominee candidate)

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and the requirements of the overall campaign tactics, it may develop ~~that~~ both our names are in the same primary. I hope that this does not occur, but it may nevertheless do so. I would anticipate that ~~both~~ your name would lead any such primary and would intend to continue to express my high regard for you during such primary.

The issues which I intend to stress are inflation and sound money, integrity and

17

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Paris, le 19

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honesty in government, mutual respect between economic, social, and racial groups in our country, and an effective affirmative dynamic foreign policy.

It will be my intention to write to you again when significant developments occur.

In the meantime may I close with a word of enthusiastic commendation and

18

HOTEL DE CRILLON

R.C. SEINE 27162

Paris, le ..... 19....

PLACE DE LA CONCORDE

Ad. Téleg.: "CRILONOTEL"

admiration for your superb leadership and for your solid contribution to the future of our country and to the cause of freedom.!

Sincerely

Harold E. Stassen

INDEX - Harold Stassen

American Bar Association, 19

Brownell, Herbert, 6, 18-19
Burger, Warren, 2-3, 5-7, 9, 11

cases:
  Brown v. Board of Education, 19-20
Cochran, Thomas, 8
conventions:
  Republican national. See Republican party

Dewey, Thomas, 16
Douglas, William O., 18

Eisenhower, Dwight D.:
  events leading to 1952 nomination, 1-13
  relations with Warren, 18-19
election campaigns:
  gubernatorial, 1942, 14-17
  crossfiling, 17
  presidential, 1948, 16
  See also Republican party, conventions

fair employment issue, 5
Fair Play Amendment. See Republican party, conventions, 1952

Heffelfinger, Elizabeth, 10-11

Knowland, William F., 3, 9, 11-12

Lamont, Thomas, 7-8

Martin, Joseph, 11

National Council of Governors, 15-16

Peasley, Ambassador Amos, 1-2

Republican National Conventions. See Republican party
Republican party:
  conventions, national,
    1948, 1-2, 7
    1952, 1-13, 18-19
  Stassen's views on, 2, 7-9, 17, 21
  See also Young Republicans
Richmond, Gordon, 10
Rockefeller brothers, 8

Schlafly, Phyllis, 7-8
Sloan, Alfred P., 8
Stassen, Harold:
  and 1952 presidential race, 1-13
  at University of Pennsylvania, 8-9
  other associations with Warren, 14-18
  on Warren's nomination to the Supreme Court, 18-19
  on the Republican party, 2, 7-9, 17, 21
Supreme Court, United States. See Warren, nomination to, and cases

Taft, Robert:
  presidential race, 2, 4, 6-8
Thye, Senator Edward, 5-6, 10-11

United Nations Charter, 18
University of Pennsylvania, 8-9

Warren, Earl:
  and 1952 presidential race, 3-13
  other associations with Stassen, 14-18
  nomination to the Supreme Court, 18-19
  relations with Eisenhower, 18-19
Willkie, Wendell, 14

Young Republicans, 14

Appendix

Letter from Merrell F. Small to "Chita" (Amelia Fry)

November 15, 1972

In the following letter Mr. Small gives his analysis of Earl Warren's appointment to the Supreme Court. It was written before the Earl Warren Oral History Project recorded interviews with either Herbert Brownell, James C. Hagerty, or Harold Stassen.

Small was in Governor Warren's office as an administrative secretary from 1945 to 1953. Although the Warren papers in the California State Archives were not open at the time he wrote the letter, the former newspaperman had done a great deal of research in clipping files--and in his own memory--in order to write a book on California politics and government from his unique vantage point.* Small continued to be a friend and admirer of Warren after the latter went to the Supreme Court and Small was in Washington as Senator Thomas Kuchel's administrative assistant. Small was one of the persons whom Earl Warren, writing his memoir for publication**, selected to read and check the chapters on the governor's office. Small's own 227-page interview is a single-volume manuscript in the Earl Warren series.

Amelia R. Fry
August 29, 1977

*That manuscript is deposited at The Bancroft Library, University of California at Berkeley.
**1977 by Doubleday, Inc., New York.

MERRELL FARNHAM SMALL . . . 3020 SEVENTEENTH STREET - SACRAMENTO 18, CALIFORNIA

November 15, 1972

Dear Chita:

I think we must accept Earl Warren's statement that he did not press Eisenhower for the CJ appointment - mainly because he didn't need to.

The usual "Warren Luck" was operating.

1. He announced on Sept. 3, 1953, that he would not be a candidate for Governor a fourth time. Five days later Chief Justice Fred Vinson died. Had Warren made the announcement after Vinson died, he would have been accused by some people of running after a dead man's job.

2. Ike owed the Governor a political debt as a result of Warren voting the California delegation to the 1952 Republican Convention in Chicago to seat Eisenhower's Texas delegates. If Warren had voted to seat Taft's delegates, a deadlock between the two leading candidates for nomination as President might have resulted, with Warren being accepted as the compromise candidate. Warren also campaigned ardently for Eisenhower in California and other Western states.

3. General Eisenhower telephoned Warren from Denver on Sept. 15,* even before he was elected, to say he would want to talk to the Governor about the first vacancy on the Supreme Court. Ike wrote in his memoirs, "Mandate for Change," that he was "definitely inclined" to consider Warren for it.

4. Jim Hagerty said later (he is quoted by Leo Katcher, page 304, but source and date are not given), "I don't know if there was a commitment, but I do know that even if there was, it would not have applied had either John Foster Dulles or Governor Dewey wanted the place (Chief Justice)." But neither Dulles nor Dewey was interested, which greatly narrowed the field for Warren, another stroke of luck for him.

5. Vanderbilt of New Jersey and Phillips of Colorado, both Federal court judges of great repute, were considered, but were thought to be too old. Five members of the Supreme Court were in their sixties (Warren was a "young" 62), and Felix Frankfurter was past 70 and ailing. Apparently Douglas and Clark, although younger men, were not considered at all because of their prominence in the Democratic Party.

6. Robert H. Jackson wanted to be promoted from associate justice, but his long feud with Justice Black raised the

* 1952

question of his ability to preside harmoniously over the court, and of course his Democratic politics also constituted a barrier. Hagerty said that "politics made it mandatory that the place go to a Republican."

7. There was talk at the time that Ike was considering appointing Harold Burton of Ohio, the only Republican on the court, to the top job. Raymond Brandt discussed this in his St. Louis Post-Dispatch article of Sept. 27, 1953, which I am enclosing for your perusal, and xeroxing if you like (but please get it back to me as soon as possible). Brandt and others conjectured that Burton might serve for a couple of years as Chief Justice, with Warren taking his place as an associate and succeeding Burton after acquiring the intervening experience. But Burton, who owed his appointment to having been one of Harry Truman's Senate cronies, was not considered to be much of a jurist, nor as having the strength of character to restore harmony to the court. The latter factor was much discussed, because Fred Vinson had been a disappointment as far as giving leadership to the court was concerned.

Of course Warren knew all this, and probably more. All were factors bearing on the possibility of his being offered the appointment of Chief Justice. Some writers have expressed doubt that he felt he had the commitment from Eisenhower as a result of the telephone call from Denver and later conversations in Washington, but I am unalterably convinced that he did believe that this was the case. When he told me in March, 1953, about the 'phone call from Denver, he said he thought I should go to Washington as Senator Kuchel's administrative assistant rather than remaining in Sacramento as his departmental secretary, "because I will not be around here much longer myself." This could have had to do, I realize, with his decision already made that he would not be running for Governor again, but it also could have related to his belief that he would be going on the Supreme Court. This could not have been something new in his mind; there had been a report at the time Associate Justice Frank Murphy died that Truman might appoint Warren as Murphy's successor. Warren had decried this as "gossip," but it could have kindled an interest in an eventual career on the court.

In any case, I believe Warren may have believed he had President Eisenhower boxed in when the time came to appoint a Chief Justice to succeed Vinson. The Governor now says he would have gladly accepted appointment as an associate justice, and would not have insisted on being named Chief, but it is hard to imagine that he suggested such a thing to the President or to Herbert Brownell when Brownell flew out to see him on September 27.

And I shall always wonder what these two men talked about for three hours in the VIP Lounge at McClellan Air Force Base that Sunday morning. Did the Atttorney General come all the way to Sacramento just to explore Warren's ability as a lawyer--or did they discuss Burton? Certainly Eisenhower must have been satisfied that Warren was qualified to serve on the court when he telephoned him over a year before. I should have thought that another telephone call from the President would have taken Warren back to Washington, to be interviewed by Eisenhower himself. This was certainly routine procedure with Warren whenever as Governor he was filling an important post in State government.

I have to confess that I cannot remember whether Warren ever actually said to me that he insisted with Brownell upon being appointed Chief Justice, but this certainly has been the strongest possible impression with me these 20 years. Perhaps a close reading of newspapers published between September 3 and October 5 of the historic year of 1953 would throw light on the matter. At least one would see the articles that wondered about Warren being selected for the top job, and could ascertain whether he denied or failed to deny these. I am unable to read the microfilm of these papers, because the machines in the State Library are so awkwardly designed as to require much bending of the neck, and bending of the neck is a luxury I can no longer afford.

Warren knows, of course, whether he was adamant against accepting a lesser appointment, but I do not think it unreasonable to raise the question that perhaps realizing his life is coming to its close, he now wishes to establish the most favorable image possible as one who was ever without selfish motive. But why has he delayed this long to deny a story he now seems so fervently to resent? I wrote in the Sacramento Bee of June 7, 1970, that he held out for the highest job ("It is generally believed Brownell tried to persuade Warren to become an associate justice"), and nothing was said by him about it then or since. I also said, "Earl Warren always knew when he held trumps. Hardly anyone thought the lone Republican on the court, Harold Burton of Ohio, was qualified to be its Chief. Robert Jackson, and able man, wanted the place, but he was a Democrat. And Warren could urge that his executive talent was sorely needed, the Chief Justice being responsible for administering all Federal courts." Perhaps my language was hedged sufficiently to prevent its being found objectionable by the Governor, but John Weaver wrote that he resisted Brownell's efforts to get him to accept appointment as an associate, and I should have thought that was the time for Warren to have scotched the story if he didn't like it. Why has he waited until now and through Warren Olney made so unseemly a fuss with you? What has occasioned this sudden sensitivity unless he is indeed anxious about his "image."

I know my memory can be at fault, but Warren's certainly is not infallible. (Many of the corrections I had to make in the MS of his chapter on the governorship in his forthcoming memoirs were necessitated by his mistaken recollection of facts.) He says now that the possibility that Eisenhower would consider him for appointment to the Supreme Court was first broached in December, 1952. The fact is that he received a telephone call several weeks before that (see 3 above) --at 10 o'clock in the morning of Sept. 15, 1952, to be precise --from the President-elect, who was then in Denver. Warren told me about this call, as I have written above, in March--and the recollection of our conversation is one of my most vivid memories.

The Governor even says now that he would gladly have accepted appointment as US Solicitor General; that he reached this decision during the weeks he was in Europe following the coronation of Elizabeth II in May, 1953. I find it quite difficult to reconcile this with the great probability that he was in line for appointment to the Court.

At the very least I know that Earl Warren always was a hard bargainer, which is probably why I have believed that he must have bargained with Brownell, determined that he was to be Chief Justice. I have seen Warren demonstrate his firmness --or obstinacy--many times while he was Governor, as when he took on the oil companies in his fight for increased gasoline taxes with which to finance freeway construction; challenged the medical trust on behalf of State health insurance; bearded the AFL lion in its den, literally, when attacked for signing the jurisdictional strike bill in 1949; and on numerous other occasions. It is inconceivable to me that he did not apprehend to the utmost the strength of his position in September, 1953, when a Chief Justice was to be appointed--and acted accordingly.

I am truly sorry I cannot be of more help to you, but if neither Warren nor Brownell will submit to questions about this matter, then others should be forgiven for speculating about it. I do not think my own theorizing is unreasonable. I shall, however, alter somewhat the language of Chapter 25 of my book, making it clear that it is speculation rather than knowledge when I say our friend must have insisted on being appointed Chief Justice when Brownell came to see him.

Sincerely,

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